laws of this administration. As a philanthropist, after having diffused instruction under all its forms, and applied charity to all miseries, he drew up a methodical code of beneficence, in order to teach others to do what he did so perfectly himself. Twenty-five volumes of judicious and useful rules for thinking rightly and acting well, and more than fifty years consecrated to the uninterrupted work of doing good, entitle De Gerando to the most careful attention, when he proposes to teach the means of self-education and moral perfection; and this remark brings us back to the work whose title we have placed at the head of our article, and which our narrative cannot but recommend. As a text-book in the higher seminaries of youth, as a manual of life to lie by the side of the Bible in our private chamber, we do not know what can take its place.

ART. VI. — *History of Latin Christianity, including that of the Popes, to the Pontificate of Nicholas V.* By HENRY HART MILMAN, D. D., Dean of St. Paul's. In Eight Volumes. New York: Sheldon & Co. 1860–61. Vols. II.–V. Small 8vo. pp. 551, 525, 555, 530.

IN our last number we gave a rapid sketch of the temporal relations of the Christian Church during its chrysalis period, extending from its organization under Constantine to its preparations for independence and conquest on the partition of the Carlovingian empire. We there stated that the fictitious Canons of Ingilram, and the forgeries of the Pseudo-Isidor, were the efficient instruments in bringing about the revolution which in the middle of the ninth century reversed, in many important particulars, the relative positions of the secular and ecclesiastical powers. The lapse of a thousand years has wellnigh obliterated the history of that revolution. The principles it established became, in the new order of things, the especial prerogatives of the class which controlled all learning and education; and as those principles commanded obedience only as they were believed to draw their origin from primitive and

apostolic ages, evidence of their novelty is not to be found on the surface of monkish chronicle or papal decretal. It is only by a somewhat minute investigation of laws and canons, and a comparison of individually trivial details, that we can roughly trace the outlines of the struggle, and see the origin of those theories of ecclesiastical superiority which left so profound an impress on the Middle Age, and which have in no slight degree moulded our modern civilization. To accomplish this thoroughly is impossible in the limits assigned to us; a few points, however, will be amply sufficient to show the nature of the conflict and the extent of the victory.

It has already been stated that the Carlovingian polity, inheriting the traditions of the elder Empire, rendered the Church completely subordinate to the state; and when the Emperor regulated the internal affairs of the ecclesiastical establishment, he was only exercising his undoubted prerogative as a sovereign. The kingly office conferred this authority even upon the fresh Christianity of Clovis. An address to him by the Council of Orleans, held in 511, shows that the regal power convoked the synod, presented to it the subjects for discussion, and confirmed the canons before they acquired binding force.* The Preface to the Canons of the Fifth Council of Orleans, held in 554, indicates in a similar manner the dependence of the Church on the legislative authority of the state.† A century later, an attempt to escape from this subjection was promptly repressed by Sigebert II., who laid down the rule, in express terms, that no council should be held without his permission; and he consequently forbade the assembling of one which had been called, for the reason that his consent had not been asked.‡ So little, indeed, did the Church imagine itself an independent power, that, long after the Iconoclastic schism

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* "Quia . . . . sacerdotes de rebus necessariis tractaturos in unum colligi jusseritis, secundum voluntatis vestræ consultationem et titulos quos dedistis ea quæ nobis visum est definitione respondimus; ita ut si ea quæ nos statuimus etiam vestro recta esse judicio comprobantur, tanti consensus regis ac domini majori auctoritate servandam tantorum firmet sententiam sacerdotum." — Epist. Synod. Aurel. I., ann. 511.

† Concil. Aurel. V., Procem.

‡ "Ut sine nostra scientia synodale concilium in regno nostro non agatur." — Epist. Francor. No. 78 (Freher. Corp. Francic. Histor.).

had caused Gregory II. to throw off all real subjection to the heretic Leo the Isaurian, the acts of the Roman Church were still dated from the reigns of emperors whom it excluded from communion, and with whom it was in open conflict. When, on the death of Leo, the usurper Artavasdes obtained temporary possession of the throne, the Papal notaries joyfully used the name of an orthodox monarch; but this satisfaction was transitory, and when the son of Leo put down the insurrection, they dutifully adhered to the heretic family. Until after the middle of the eighth century, councils and decretals bore the year of the hated Constantine Copronymus, the vigorous upholder of Iconoclasticism.*

Charlemagne, concentrating in his own person both the Roman and the Frankish traditions, issued his rescripts in matters relating to ecclesiastical discipline with fully as much authority as when legislating for concerns purely secular. Adalhard of Corbie, one of the chosen counsellors of Louis-le-Débonnaire, has left us a description of the procedure customary at the assemblies of the Franks, by which we learn that the prelates and nobles sat separately to debate the matters appertaining specially to each class; that the capitularies, or laws, were submitted to them by the Emperor for debate, but that the Emperor finally decided according to the light thrown upon the subject. No difference is therefore perceptible between secular and ecclesiastical affairs, and as both the initiative and the decision thus belonged to the sovereign, he had powers limited only by the practical relations existing between him and his subjects at the moment.† Thus throughout the whole body of the Capitularies political and clerical regulations are so intimately mingled that separation is almost impossible, showing that no thought of distinguishing them existed at the time, and that no doubt was entertained as to the equal competency of the crown with regard to both. We have seen, on a previous occasion, that the Roman pontiffs were the subjects of Charlemagne, and submitted themselves without remonstrance to his

* For instance, the Epistles of Pope Zachary, in Epist. Bonifacii, No. 142, 143, etc.

† Hincmar, Instit. Reg. cap. 34, 35. Hincmar alludes to Adalhard as "inter primos consiliarios" of Louis.

jurisdiction; it will therefore readily be understood that the lower orders of the hierarchy were equally dependent. Paulinus, Archbishop of Aquileia, in an epistle to the Emperor, exhorts him to the due and vigorous administration of his authority over the internal affairs of the Church as well as of the state, pointing out certain matters in the former as especially requiring his attention.* Even points of faith and doctrine were also subject to his decision. The decisions of the Synod of Frankfort in 794 did not acquire legal force until a Capitulary, issued in the sole name of the monarch, designated the exact amount of veneration with which images were to be regarded.† In no less degree did Louis-le-Débonnaire consider himself the head and ruler of the Church. One of his edicts addressed to the bishops assumes him to be the source of their episcopal authority, for the proper exercise of which he held himself personally responsible.‡ When his pious zeal assembled the Council of Aix-la-Chapelle in 816, to reform the corruptions of the Church, the stringent canons drawn up to meet his wishes were promulgated under his authority; his commands enforced obedience to them, and any infraction of them was punishable by him.§ Indeed, an Imperial Diet boldly declared that the Emperor's power over the Church was superior to that of the Pope himself.‖ Even after the civil wars, as late as 845, the bishops of the Synod of Thionville addressed Lothair, Louis, and Charles, entreating them to remove the corruptions of the Church, for the governance of which they were responsible to God.¶ The tottering power of young Charles-

* "Ut admirabili in rerum ecclesiasticarum sive civilium administratione strenuus, et sapientiæ fonte redundes et virtutis exhibitione triumphes." — Baluz. et Mansi, Tom. II. p. 11.

† Car. Mag. Rescript. de non adorandis imaginibus (Goldast. Const. Imp. II. 2).

‡ "Ut unusquisque vestrum in suo loco et ordine partem nostri ministerii habere cognoscatur . . . . . nobis vero adjutores in administratione ministerii nobis commissi existatis, ut in judicio non condemnari pro nostra et vestra negligentia . . . . mereamur." — Capit. Ludov. Pii, ann. 823, c. 3, 4. Expressions equally strong are to be found in Capitul. Lib. VI. c. 432.

§ Miræi Cod. Donat. Piar. c. 13.

‖ "Imperialem majestatem plus posse in administranda ecclesia quam Pontificiam." — Goldast. I. 188.

¶ "Si . . . . ab hac eadem ecclesia, vobis ad gubernandam commissa, pro qua ex ministerio regali reddituri estis Regi Regum rationem in die judicii, tam multiplices ac perniciosas corruptionis pestilentias vultis amovere." — Capit. Carol. Cal., Tit. II. c. 1.

le-Chauve still required that the canons of synods, relating solely to Church affairs, should be submitted to him for confirmation, even as the *sanctio* of the Roman and Greek Emperors had been requisite to give effect to the *dispositio* of the earlier Councils. This was not an empty show of unmeaning deference, for on one occasion we find him annulling many of them with his simple veto,* and in 847 the Council of Maintz, in appealing to Louis-le-Germanique for the confirmation of its canons, employs terms which show that without it they had little chance of respect.† The Supreme Pontiff himself had not yet thought of escaping from temporal jurisdiction; for in the same year we find Leo IV. promising implicit obedience to the laws of the Emperor Lothair and of his predecessors.‡

Ingilram and Isidor, however, taught a doctrine very different from all this; and when the time was ripe, their canons were duly brought forward to prevent all further interference of royalty with sacerdotal legislation. As early as 833, when Gregory IV. was summoned from Italy by the sons of Louis to render their father's degradation complete, and the Pope could scarcely nerve himself to the awful task, Wala, the fierce promoter of the rebellion, endeavored to strengthen his confidence by producing a collection of canons proving that the successor of St. Peter was empowered to judge mankind and was not to be judged of men. Even in his fall, however, the son of Charlemagne was heir to too much traditional veneration for such doctrines to obtain currency, and they remained in abeyance until those who had evoked them were ready to be their victims. In 845 appeared the Capitularies of Benedict the Levite. This compilation purports to contain the Carlovingian laws in an accessible form, and was for the most part extracted from the collections of Riculfus of Maintz, the spon-

* Capit. Carol. Cal., Tit. VII. — The previous year the Synod of Vernon suggested various laws respecting ecclesiastical matters to Charles, entreating their enactment. (Baluz. II. 13 - 20.)

† "Hæc vero quæ vobis transmissa sunt, petimus ut vestra auctoritate firmentur, ut si quis adversarius illis existere voluerit, prævalere non permittatur." — Epist. Synod. ad Ludov. (Baronius, ann. 847, No. 29.)

‡ "De capitulis .... vestris .... irrefragabiliter custodiendis ac conservandis, quantum valuimus ac valemus, Christi propitio, et nunc et in ævum, nos conservaturos modis omnibus profitemur." — Gratian. Dist. X. can. 9.

sor for the Isidorian canons. The collection contains a large body of genuine laws, thickly interspersed with extracts from the new supposititious documents, — the canons of Ingilram being principally quoted, together with a considerable number from Isidor. The object of the whole is so evidently to give currency to the new doctrines, that some critics have been led to the belief that Benedict must also be the real author of the False Decretals.* These Capitularies were unquestionably received and used as authoritative, and such customs as they did not simply record they assuredly did much to create and introduce. In them the principle is distinctly and repeatedly declared, that the imperial legislation is subordinate to the sacerdotal, and that, in any conflict between the two, the former must give way ; † and that these doctrines were not merely theoretical speculations, but that they were practically enforced and generally admitted, will be manifest from various transactions to be alluded to hereafter.

A point of vital importance to the Church, in its efforts for independence, was the admission of the principle of ecclesiastical immunity from secular jurisdiction. For ages a persistent and resolute struggle had been maintained to acquire the recognition of this privilege. That quarrels between church-

* Knust is of this opinion, and Denziger labors hard to establish it. Of Benedict's Capitularies, fifty-seven, being about five per cent of the whole, are Isidorian.

† For example : " Constitutiones contra canones et decreta Præsulum Romanorum seu reliquorum pontificum, vel bonos mores, nullius sunt momenti." — Capitul. Lib. VII. c. 346. (Ingilram. c. 39 ; Gratian. Dist. IX. can. 4.)

" Ut execrandum anathema fiat . . . . quicunque Regum deinceps canonis hujus censuram in quocunque crediderit aut permiserit violandam." — Capitul. Lib. VI. c. 322. (Ingilram. c. 80 ; Gratian. Caus. 25, q. 1, can. 11.)

And Pius I., an humble Roman bishop of the second century, was made responsible for " Lex Imperatorum non est supra legem Dei sed subtus," — Capitul. Add. III. c. 17 (Gratian. Dist. X. can. 1,) — a text which might be made to cover the most extravagant pretensions.

The progress of these principles can be traced with great clearness in Iceland, which was converted after they had become firmly established. In 1053, within less than half a century after the establishment of Christianity, the sacerdotal power was already strong enough to procure an enactment that, whenever the popular laws conflicted with the ecclesiastical, the former must give way. (Schlegel, Comment. ad Grágás, p. xxiii.) This would seem to be even a superfluous precaution when we find that in the Lögretto, or central high court, when any difference was found to exist between the copies of the code in the hands of the judges, those in possession of the bishops were held to present the authentic text. (Grágàs, Sect. II.)

men, or aberrations of discipline or faith, should be adjudicated by the bishops was reasonable enough; but to ask that a monk or priest guilty of a crime should not be subject to the ordinary tribunals, and that civil suits between members of the clergy and the laity should be referred exclusively to a court composed of ecclesiastics, was to claim a prerogative of the highest value, not only in its practical daily results, but in the moral superiority which it conferred on the privileged order. Success in this was gradual, but it was complete. The respect due to the sanctity of the episcopal functions was the entering wedge, and for this an antiquity was claimed coeval with the revolution by which Christianity became the dominant religion. If the account given by Rufinus be correct, when the Nicene Council assembled for the condemnation of Arius, and the holy fathers, neglecting that duty, busied themselves only with mutual criminations and accusations, Constantine ordered them to hand him all their *libelli* of complaint, and then addressed them: "God has constituted you his priests, and has given you authority to judge us, but you are not to be judged of men. Wherefore await the decision of God alone between you, and keep your quarrels, whatsoever they be, for his judgment alone. For you are gods, given us by God, and it is not suitable that man should pronounce judgment on gods." Whereupon he ordered the accusations to be burned without examination, and commanded the bishops to proceed with the business of the Council.* It may well be assumed, however, that Rufinus has exaggerated what probably was only a polite form in which the shrewd and politic Emperor veiled the reproof which he administered, and the sarcasm which lurked in his deferential presumption that they were worthy of the tribute which he rendered to their office. It is true that in 355 Constantius embodied this principle in a law, enacting that bishops could be tried only by bishops;† but this shows that no such legal custom pre-existed, and even this

* Rufini Hist. Eccles. Lib. X. c. 2. This blasphemous expression was embodied literally in the Capitularies of Benedict (Lib. V. c. 315), and was made the basis of extravagant pretensions, without apparently observing that it destroyed ecclesiastical as fully as secular jurisdiction over prelates.

† Lib. XVI. Cod. Theod. Tit. ii. l. 12.

was for a temporary purpose, arising, like the Sardican canon, from the Arian schism, and it was only of temporary authority. It can hardly have been more; for in 376 a Constitution of Gratian expressly reserves to the secular tribunals all cases concerning ecclesiastics, except in matters confined to religion and in those of trifling importance;* and a Novel of Valentinian III. asserts this to be the rule established by the Imperial laws.† In the East, a law of the Emperor Leo, in 468, shows that churchmen were still subject to the ordinary jurisdiction;‡ while in the West, Theodoric proclaimed that the Bishop of Rome himself was not exempt from trial and condemnation at the command of the sovereign, § — the case of Pope Silverius, convicted by Belisarius on a fabricated charge of treason, showing that this was not an empty assertion.‖ A step, indeed, was gained when, according to an epistle of Athalaric the Ostrogoth, any suit or prosecution against an ecclesiastic of Rome had to be brought before the Pope; but it was

* Lib. XVI. Cod. Theod. Tit. ii. l. 23. This shows that the law attributed to Constantine by Sozomen (Lib. I. c. 9), granting to clerical defendants the right to elect episcopal judges, either never existed, or was only of temporary authority.

† Nov. XII. Valent. de episc. judic. The Constitution of Honorius of 412, and that of the youthful Valentinian III. of 425, are of a different purport, and were strenuously alleged in the ninth century to support the pretensions of the Church; but the former may be safely assumed to refer to ecclesiastical matters alone, while the latter was probably extorted by the powerful Church party from the young Emperor and his mother Placidia immediately after the overthrow of the usurper John. That it was opposed to the received jurisprudence of the age is shown by Valentinian's subsequent declaration in the Novel cited above. We might also refer to Lib. XVI. Cod. Theod. Tit. xii. l. 3, of similar tenor, but its authenticity is somewhat doubtful. The ninth canon of the Third Council of Carthage shows the jealous efforts of the Church to maintain jurisdiction over the affairs of its members, denouncing heavy penalties on the clergy who should seek the secular tribunals in either civil or criminal cases, on account of the disrespect thus manifested toward their own officials. At the same time, as it enumerates bishops among those who might justify themselves before lay judges, it shows that the exemption attributed to Constantine had probably never existed, and that the privilege granted by Constantius had either fallen into desuetude, or had been scorned on account of its heretical intent.

‡ Const. 33, C. I. 3.

§ "Justum est ut facti sui lege teneri debeat Romanus Pontifex obligatus . . . ipse etiam visitatorem et cognitorem suorum criminum a nobis accipere et subire debeat," (Goldast. III. 613,) — a principle which the Ostrogoth did not hesitate to put in force against both Symmachus and John I.

‖ Abbon. Floriac. Excerpt. ex Anastas. No. LX.

rendered almost nugatory by the permission granted to the plaintiff to appeal from his decision to the secular magistrates.* Justinian finally established the privilege credited to Constantine and attempted by Constantius, by conceding to the episcopal dignity the prerogative of having only episcopal judges; but as he carefully reserved the Imperial right to disregard the exemption, the principle of ecclesiastical subordination was preserved intact.† This privilege he extended in 539 by placing the monasteries under the sole control of the bishops, in order that their hallowed precincts should not be profaned by the sacrilegious intrusion of secular officials.‡ A few months later, at the solicitation of Mennas, Patriarch of Constantinople, he ordered that all civil suits against ecclesiastics should be brought before their bishops, with recourse to the popular tribunals only when the prelate was unable to decide. Criminal prosecutions, however, were reserved for the civil magistrates, except in minor offences; § and nothing is said to warrant the belief that a clerical plaintiff could select a judge of his own order.‖ The result of this liberality was apparently not satisfactory in its practical working; for a few years later the privilege was virtually withdrawn, by allowing the largest liberty of appeal to the secular tribunals from such episcopal decisions.¶

While the learning and civilization of the East presented these obstacles to the progress of the Church, the careless barbarism of the West offered a much wider field for encroachment. The regions subject to the Burgundians and Wisigoths, indeed, adhered to the traditions of the Roman law; for the Council of Agde in 506, and that of Epaone in 517, while ordering the clergy not to seek the secular tribunals as

* Athalar. Const. XVI. (Goldast. III. 98.)

† "Nisi princeps jubeat." — Novel. 123, c. 8. ‡ Novel. 79.

§ Novel. 123, c. 20.

‖ Novel. 83. It is probable, however, that in Italy greater latitude was allowed to episcopal jurisdiction; for we find Theodoric sending for trial to Eustorgius, Bishop of Milan, "cujus est et æquitatem moribus talibus imponere," some priests charged with perjury and false witness of an aggravated character, (Goldast. III. 32,) — an offence which, in the legislation of Justinian, was specially reserved for the secular courts.

¶ Novel. 123, c. 21.

plaintiffs, directs them to make no resistance when summoned as defendants, showing that they had endeavored unsuccessfully to obtain that privilege.* A law of the Wisigoth Chindaswind, about the middle of the seventh century, also reveals the same struggle, and the triumph of the secular power, as it imposes a heavy fine on bishops who should refuse to acknowledge the jurisdiction of the ordinary tribunals, and inflicts on the lower orders of the clergy the same penalty to which the laity were liable for such contempt of court.†

The zealous fervor of the newly converted Franks was less tenacious. As early as 538, even before the carefully guarded grants of Justinian, the Third Council of Orleans was able to enact a canon rendering episcopal assent necessary before a clerk could appear in a secular court, either as plaintiff or defendant.‡ This virtually placed in the hands of the bishops the jurisdiction over all matters in which ecclesiastics were concerned; but possibly the good fathers were too hasty in their assumption of this power, for though it was more fully developed three years later, in the Fourth Council of Orleans,§ subsequent legislation and canons show that there was no definite system of procedure. The Council of Auxerre, in 578, devised an ingenious expedient by which a suit against a clerk was to be brought against a brother of the defendant,

* "Sed si pulsati fuerint, sequi ad sæculare judicium non morentur." — Concil. Epaon., can. 11; Concil. Agathens., can. 32. That the bishops did not find their clergy always willing suitors at their courts is shown by their bitter complaints in the Third Council of Toledo, in 589, of the "diuturna indisciplinatio et licentiæ inolita præsumptio," which led members of the Church constantly to seek the secular tribunals in their mutual quarrels. Concil. Toletan. III., can. 13.

† "Quod si quislibet episcopus admonitionem judicis, fretus honore sacerdotali, contempserit, et pro sua persona assertorem dare distulerit, confestim a judice negotii, seu a provinciæ suæ duce vel comite compulsus, L. solidorum dampnum excipiat." — L. Wisigoth. Lib. II. Tit. I. c. 18. This subjection of the clergy is the more remarkable, as Spain at this period was thoroughly Catholic, and the bishops enjoyed great power and influence. The *Fuero Juzgo*, or Romance version of the Gothic laws, in force until the thirteenth century, omits this provision concerning the bishops, but retains the liability of the inferior clergy, although they were, throughout the rest of Europe, by that time completely independent of the civil power. (Fuero Juzgo, Lib. II. Tit. I. ley 17.)

‡ "Clericus cujuslibet gradus, sine pontificis sui permissu, nullum ad sæculare judicium præsumat attrahere, neque laico, inconsulto sacerdote, clericum in sæculare judicium liceat exhibere." — Concil. Aurel. III., can. 32.

§ Concil. Aurel. IV., can. 20.

or some other layman.* That of Macon, in 581, conceded to the secular judges criminal jurisdiction over clerical offenders.† That of Paris, in 615, repeated the injunction of the Councils of Orleans, requiring the assent of the bishops in all cases;‡ but in the Edict of Clotair, which gave legal force to the proceedings of the Council, this provision is expressed in much more limited terms, and a mixed tribunal is ordered for all cases occurring between the clergy and the laity.§ Even this was probably a greater favor to the Church than could be secured in daily practice, for the Council of Chalons, in 649, complains of the civil magistrates as extending their power over the monasteries and parishes;‖ and, about the same period, the Bavarian laws, while exempting the episcopal order from the liability to private vengeance, treat it as in every respect amenable to the royal and popular tribunals.¶

Whatever was doubtful in the prevailing custom was, however, eventually construed in favor of sacerdotal immunity. In 755 the Acts of the Synod of Verneuil, issued with the authority of Pepin-le-Bref, contain the important privilege more distinctly enunciated,** while a Capitulary of Charlemagne, in 789, denounces heavy penalties against any ecclesiastic who should so far disregard the rights of his order as to obey a summons to a secular court as defendant in either a civil or a criminal action.†† Theoretically, the point was thus gained; but its practical enforcement was reserved for a later period, and we may safely assume that little respect was paid to the prerogatives of the Church by the warrior-judges who thought that her safety was amply provided for by investing her children with a double or triple wehr-gild for life and limb.‡‡ Ample evidences remain of this. We have already

* Concil. Antissiodor., can. 41.
† Concil. Matiscon. I., can. 7.
‡ Concil. Paris. V., can. 4.
§ Edict. Chlotar. II., ann. 615, c. 4, 5.
‖ Concil. Cabillon., can. 11.
¶ L. Baioar. Tit. I. cap. 11, § 2. The clergy, however, were under the jurisdiction of their bishops, except for incontinence. (Tit. I. cap. 13, § 3.)
** Capit. Pippini, ann. 755, § 18. About the same time a similar rule was enunciated in England. "Ut nulli sacerdotum liceat fidejussorem esse, neque derelicta propria lege ad sæcularia judicia accedere." — Ecgberti Excerpt. cap. xvi.
†† Capit. Car. Mag., ann. 789, § 37. Also, Capit., ann. 794, § 37.
‡‡ The Second Council of Macon, in 585, complains bitterly that the inviolability of episcopal dignity received little respect at the hands of irreligious judges. (Concil. Matiscon. II., can. 9.) This is not to be wondered at, when these privileges

seen that Charlemagne and Louis-le-Débonnaire held the Pope himself as subject to their jurisdiction; and the latter monarch even sent a layman as commissioner for the trial of Paschal I. A Capitulary of Charlemagne in 805 orders the public judges to expedite with diligence the suits of churches, widows, and orphans,* showing that the secular courts were open to ecclesiastical cases, and were habitually applied to for them, which is confirmed by an allusion in Flodoard to the custom of Wulfarius, Archbishop of Rheims, and of his successor, Ebbo, in conducting personally the causes of their Church before the civil judges.† A law of 794 shows that the monarch exercised the right of sitting in ultimate appeal in criminal cases involving churchmen, as freely as in those concerning the laity;‡ and another, in 805, directs the loftiest prelates to be brought to his tribunal for judgment.§ Even for certain violations of ecclesiastical discipline, we find Louis-le-Débonnaire, in 816, directing that clerical offenders shall be sent to him for punishment.‖ A law of 819 forbidding the duel when both parties to an action were ecclesiastics, but retaining it when one was a layman, and in the former case referring the matter to the Count of the province, shows how complete was the jurisdiction of the secular tribunals over the clergy.¶ Nor was the supremacy of the sovereign destroyed by the abasement of the kingly dignity consequent on the civil wars. In 845 the Synod of Thionville besought the assembled Carlovingian princes to employ their authority vigorously in bringing the Church back to its former purity,** and a few months later the Synod of Ver-

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were disregarded by those who were most interested in maintaining them. The Fifth Council of Paris, in 615, found it necessary to forbid bishops from attacking each other in the secular courts. (Concil. Paris. V., can 11.)

* Capit. Car. Mag. II., ann. 805, § 2.

† Flodoard. Hist. Remens. Lib. II. c. 18, 19.

‡ "Veniant accusatores cum accusato, cum literis metropolitani, ut sciamus veritatem rei." — Capit. Car. Mag., ann. 794, § 4.

§ "Episcopi et Abbates et Comites pravi veniant ad curtem." — Capit. Car. Mag. III., ann. 805, § 14.

‖ Epist. ad Archiepisc. Salisburg. (Miræi Cod. Donat. Piar. cap. 13.)

¶ Capit. Ludov. Pii I., ann. 819, § 10. That the Church made no opposition to this is shown by its being included by Regino in his work, "De Discip. Eccles." Lib. II. c. 334.

** "Petimus tandem ut ordo ecclesiasticus . . . . . per potestatem vestram, et per

neuil made a special request to Charles-le-Chauve that he would delegate full powers to commissioners to examine into and punish the violations of ecclesiastical discipline everywhere rampant.* About the same time we find Modoin, Bishop of Autun, employing the secular courts in various quarrels with the clergy of Lyons, his metropolis, and maintaining the doctrine that only bishops and abbesses were exempt from secular jurisdiction; † and this is confirmed by a passage in the Canons of St. Rodolf, Archbishop of Bourges, permitting the presence of priests in civil courts, with the permission of their bishop, when their own causes are to be heard.‡

All this proves irresistibly that ecclesiastics were amenable to civil jurisdiction, and that the king was recognized as the fountain of justice, from whom emanated the power of punishment and of vindicating the majesty of the law, even when the wrong-doer was a churchman. How great a change was wrought in a few years we may learn from a trifling incident at the Synod of Soissons in 853, where Charles is described as entering humbly, — "simpliciter cum Episcopis resedebat," — and he, the King of the Franks and the grandson of Charlemagne, laid a complaint before the assembled prelates against a petty clerk, a mere deacon, Rainfroy of Rheims, whom he accused of forging royal precepts; and the bishops condescended to order the accused not to leave Rheims without justifying himself.§ Unimportant as is the occurrence, it

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ministerium ministrorum dominationis vestræ, secundum antiquam consuetudinem, suum vigorem accipiat." — Capit. Car. Cal., Tit. II. § 4.

* "Ut . . . . . apostolicæ disciplinæ contemptores, missis a latere vestro probatæ fidei legatis, absque respectu personarum, et excæcatione munerum coerceantur." — Capit. Car. Cal., Tit. III. § 2.

† Much to the disgust of the Lyonese, who were deprived of their leader by the degradation of St. Agobard. Florus Diaconus vented his indignation in a long elegy, soothing in its monotonous objurgation. He describes the doctrine of Modoin: —

"Dicere nullus honos debetur (credite) sacris
Ordinibus: cunctos pulset ubique forum.
Nam nisi cœnobium mater muliebre gubernans
Et sacer antistes, cætera pulvis erunt."

‡ "Neque ad sæculare judicium pergant. . . . . Si vero eorum propria causa agenda est, cum licentia episcopi et cum advocato pergant." — Capit. Rodolf. Bituricens. c. 19.

§ Capit. Car. Cal., Tit. XI. act. 6.

registers a victory gained by the lowest of the clergy over the highest of the state, and it marks the obedience of the king to the doctrines promulgated in the most emphatic manner throughout the Capitularies of Benedict, which secure the Church from all interference on the part of secular tribunals.* We need not be surprised, therefore, that a few years later Nicholas I. was able to forbid any inquiry or examination on the part of the laity into priestly morals or conduct, the sacerdotal character being too sacred for discussion by those whose only duty it was to revere and obey.†

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* The importance attached to this privilege is manifested by the careful iteration of the principle in various forms throughout the later books of the Capitularies. In the collection of Ansegise it receives little notice; but Benedict is never tired of repeating it. For instance, Lib. V. c. 70, 192, 378; Lib. VI. c. 111, 164, 434; Lib. VII. c. 139, 210, 438, 469, present it in different points of view. It was, however, by no means quietly admitted by the royal authority. Some ten years later, Charles, probably feeling himself stronger, adopted a very different course with Hincmar, Bishop of Laon. That restless prelate becoming involved in a dispute concerning a piece of land, Charles evoked the case to a secular court. Hincmar did not deny the jurisdiction, but sent an excuse in legal form for non-appearance at the first hearing. The angry monarch committed the high-handed act of sequestrating all the temporalities and revenues of the see, which drew upon him a long and earnest remonstrance from the sufferer's uncle, the all-powerful Hincmar of Rheims, who stigmatized the royal act as unexampled and unheard of, — "quod nec in legibus nec in libris ecclesiasticis quemquam christianorum principum fecisse legimus." (Hincm. pro Eccles. Libert. Defens. Expos. I.) The Bishop of Laon was finally reinstated, and afterward proved a thorn in his uncle's side.

† "Verum de presbyteris qualescunque sint, vobis, qui laici estis, nec judicandum est, nec de vita ipsorum quidpiam investigandum, sed episcoporum judicio quidquid est, per omnia reservandum." — Epist. 97, § 70, — and this was addressed to a king.

The practical immunity from punishment which ecclesiastical criminals thus enjoyed during the mediæval period, and the lasting impression which the privilege made on national institutions, are well exemplified by the *privilegium clericale*, or "benefit of clergy" of the English Common Law. That a clerk could be tried, convicted, and condemned by the Church alone, was a principle recognized, with some variations, by the jurisprudence of all Europe (Bracton, Lib. III. Tract ii. cap. 9; Legg. Eccles. Maccabæi R. Scotor; Beaumanoir, Cap. XI. § 40; Siete Partidas, Pt. I. Tit. VI. l. 61; Constit. Sicular. Lib. I. Tit. 42; Assises de Jerusalem, Baisse Court, cap. 14, 367; Specul. Suevic. cap. 77; Legg. S. Stephani Hungaror. R. cap. 3; Ragnald. Ingemund. Leg. Suecor. Lib. I. cap. 20); and the judge who disregarded this prerogative incurred excommunication removable only by the Pope. ("Cil qui l'aroient justicié seroient escommenié griement, sans estre absols que par l'apostole." — Beaumanoir, Cap. XI. § 44.) Although in France the convicted clerk was liable to perpetual imprisonment (Ibid., § 45), in England his only punishment was degradation, irrespective of the number or degree of his crimes, ("Cum autem clericus sic de crimine convictus degradetur, non sequitur alia pœna pro uno

This Decretal of Pope Nicholas leads us to consider another mode by which the ecclesiastical body sought to establish its superiority. This was a claim to inviolable sanctity. Not content with immunity from secular jurisdiction, a determined effort was made to obtain immunity from secular accusation. The principle was too monstrous to be successfully introduced, and the canons which express it in the most unqualified manner are mingled with others whose careful enumeration of the causes of incompetency in witnesses shows that the more sweep-

delicto vel pluribus ante degradationem perpetratis," — (Bracton, Lib. III. Tract. II. cap. 9, § 2,) except for apostasy. When to this we add the enormous chances of escape afforded by the system of canonical compurgation, which rendered ecclesiastical trials almost a ludicrous mockery of justice, we can readily understand that the privilege came to be regarded as a practical exemption from punishment. Becoming gradually an integral portion of the Common Law, it thus extended itself into the substance of a pardon for a vast number of felonies, on the first conviction, to all offenders whose ability to read seemed to affiliate them to the ecclesiastical body; while a liberal construction of the test provided aliens with books in their native language from which to prove their "clergy," and blind men escaped the halter by speaking Latin "congruously." Even as of old, the convicted clerk was degraded, and thus on a subsequent accusation was exposed to the justice of the secular courts; so, after the privilege became general, the layman could plead his "clergy" but once, and was barred from any repetition of his escape. Long after it had thus lost all special reference to the Church, the ingenuity of lawyers was taxed to the utmost in distinguishing between the shades of crime entitled to the benefit of clergy and those for which the convict was ousted, rendering this, according to Sir Matthew Hale, "one of the most involved and troublesome titles in the law." (Hale, Placit. Coron. Chap. XLIV.-LIV.) Early in the reign of Queen Anne the privilege was extended to all malefactors, by removing the reading test, the unlettered felon being thus placed on a par with his more learned fellows; and it was not until the present century was well advanced that this remnant of mediæval veneration was abolished by 7 and 8 Geo. IV. c. 28.

That the English law was not the only one in which the difference of punishment meted out to clerk and layman amounted practically to almost an immunity for the former, is well exemplified in a Constitution of the Emperor Henry IV., in 1085, enforcing the Truce of God, under penalties of frightful severity, mutilation and death being unsparingly threatened for all infractions of it. A crime so unclerical would seem to claim especial punishment for malefactors whose profession would render it peculiarly odious, particularly when we reflect that simple degradation or suspension would be but a trifling infliction on those who were so lost to all sense of their sacred functions as to come within the provisions of the edict. "Unde laici decollentur, inde clerici degradentur; unde laici detruncentur, inde clerici ab officiis suspendantur; et cum consensu laicorum crebris jejuniis et verberibus usque ad satisfactionem affligantur." (Henrici IV. Constit. IV., Patrologiæ, T. 151, p. 1134.)

The only secular tribunal which dared to exercise jurisdiction over ecclesiastics was that of the terrible Free Judges of Westphalia, whose claims to this privilege

ing regulations were rejected by the common sense of mankind. Bishops were especially the objects of this tender precaution. As early as the fourth century a Council of Carthage had forbidden the reception of accusations against bishops on the part of disreputable persons, and the Council of Chalcedon had repeated the prohibition. At that period such regulations only affected the internal affairs of the Church; but when the principle was adopted in the legislation of Charlemagne it assumed a wider significance, and became applicable to temporal as well as to spiritual matters.* It is true that the episcopal dignity had been protected from false accusations by a Constitution of Valentinian III. in 439, imposing a fine of thirty pounds of gold as a penalty for such practices;† but this severity is mildness in comparison with the canons of Isidor, Ingilram, and their followers. It was asserted to have been an early doctrine of the Church that the bishop was not to be accused by any of his flock; for the sheep do not attack their pastor, neither is the scholar greater than his teacher, nor may the slave destroy his master;‡ — a principle repeated with a zeal which shows the importance attached to it and the persistent efforts made to establish its recognition. Had this dogma been successful it would soon have been applied to the whole eccle-

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are proved by the occasional exemptions granted to particular churches. (Senckenberg, De Judic. Westphal. Cap. XIX. § 7.) Even this, however, was not always submitted to; for when, in 1448, the Vehmgericht, at the complaint of two knights, cited Theodoric, Archbishop of Maintz, that prelate appealed for protection to the Papal Legate at the Imperial Court. The Cardinal of St. Angelo accordingly lost no time in denouncing the heaviest spiritual penalties against the audacity which set at naught the rights of the Church, — "licet juxta sacrorum canonum dispositionem laicis in personas ecclesiasticas . . . . . et bonis eorundem nulla prorsus competat jurisdictio sive potestas." (Gudeni Cod. Diplomat., Tom. IV. p. 306.)

* Capit. Car. Mag. I., ann. 789, §§ 29, 34. Capit., ann. 794, § 34.

† Const. 23, C. I. 3.

‡ Thus to Evaristus, a Pope of the first century, was attributed the canon, "Non est a plebe vel a vulgaribus hominibus arguendus vel accusandus episcopus, licet sit inordinatus" (Gratian. Caus. II. q. 7, can. 1, Pseudo-Evarist. Epist. 2); Pius I. was cited as authority for "Oves pastorem suum non reprehendant, plebs episcopum non accuset, nec vulgus eum arguat, quoniam non est discipulus super magistrum, neque servus supra dominum" (Ibid. Caus. VI. q. 1, can. 9, Pseudo-Pii Epist. 1); while Calixtus I. was made responsible for "Criminationes contra doctorem nemo suscipiat, quia non oportet filios patres reprehendere, nec servos dominos lacerare" (Ivon. Decret. P. V. c. 234, Pseudo-Calixt. Epist. 1),— which is almost literally identical with Capit. Lib. VI. cap. 357, while Lib. V. cap. 315 is equally strong.

siastical body; for clerical peccadilloes were declared to be objects of toleration, and not of punishment,* and a canon from Ingilram and Isidor was adopted, which shielded priests from all accusations made by those whose virtue and orthodoxy were not known and approved.† It was even proposed to forbid any layman to accuse an ecclesiastic,‡ and the inviolability of the higher clergy was secured by penalties of frightful severity denounced against those who should insult or injure prelates. To accuse them was declared to be an accusation of the ordinance of God, and a calumniator of his bishop was declared by law to be a homicide, who was to be dealt with accordingly.§ In addition to this, Charlemagne had been induced to adopt another of the forgeries, according to which a Roman Synod under Sylvester I. had decreed that for the conviction of a bishop the testimony of seventy-two witnesses was requisite, while forty-

* In a canon attributed by Isidor to Anaclet. "Pastor ecclesiæ . . . . pro reprobis moribus magis est tolerandus quam distringendus." — Remig. Curiens. Episc. can. 17 (Pseudo-Anaclet. Epist. 5).

† "Quorum fides, vita et libertas nescitur non possunt sacerdotes accusare." — Capit. Lib. VI. cap. 359 (Ingilram. c. 16, Pseudo-Calixt. Epist. 2, Pseudo-Fabian. Epist. 2).

‡ "Nullus laicus audeat clerico crimen inferre." (Gratian. Caus. II. q. 7, can. 2, Pseudo-Sylvester.) "Laico non licet quemlibet clericorum accusare." (Ibid. can. 3, Pseudo-Marcellin. Epist. 2.) There was a certain fairness in the forgeries when this rule was made to work both ways, and neither class was allowed to accuse the other: "Quoniam sicut sacerdotes vel reliqui clerici a sæcularium laicorum excluduntur accusatione, ita illi ab istorum sunt excludendi et alienandi criminatione" (Gratian. Caus. 2, q. 7, can. 6, Pseudo-Fabian. Epist. 2); but while the latter part of this precept was repeated and insisted on, the former was passed over. At the Council of Maintz, in 813, it was made the special duty of the priesthood to see that the misdeeds of their parishioners were punished, — "Si autem neglexerint sui gradus periculo subjacebunt" (Concil. Magunt. can. 7), — and that this was practically enforced will be evident when we come to consider the jurisdiction of the clergy. The doctrine of Isidor was in full vigor in the Scottish law of the fourteenth century: "Approbatione, acquietatione, et testimonio repelluntur . . . . clerici contra laicos et e converso." (Roberti I. Scot. Stat. II. cap. 34.)

§ Any one who should offer to a bishop "aliquam injuriam aut injustam dehonorationem" was to compound for his life; all his property was confiscated to the Church, and he was to pay to the king a triple "bannum," or sixty solidi, — an immense fine, — with the proviso that, if unable to make the payment, he became a slave of the fisc until he could do so, which was probably for life. Capit. Ingilenheim. Lud. Pii, § 3.

"Dei ordinationem accusat, in qua constituuntur, qui episcopos accusat aut condemnat." — Capit. Lib. VII. cap. 167.

"Si quis clericus vel laicus exprobrator vel calumniator suo episcopo extiterit, ut homicida habeatur." — Ibid. cap. 203.

four were necessary in the case of a priest, thirty-seven in that of a cardinal-deacon, and seven for a sub-deacon, — all to be men of family and professing Christians.* Had these efforts met with the success desired by their authors, it is not easy to follow out the results to their ultimate consequences. The sacerdotal body, thus elevated into a supreme and inaccessible caste, would probably have speedily become infected with the corruptions inseparable from irresponsible power and immunity; and when Europe, unable to endure the existence of the pestilential mass, had at length arisen and destroyed it, religion itself, degraded by its ministers, might perhaps have perished with them.

While thus throwing off all subjection to the judicial authority of the state, the Church was making rapid progress in acquiring an important share in the general administration of justice. The functions of the judge are among the most potential sources of influence, and a class that can arrogate to itself, as a class-privilege, the right to dispense the law, has thereby secured no small share in the government of the body politic, while its authority over all ranks of society tacitly becomes almost unlimited. To combine this source of power with the ministrations of religion was to control the life, here and hereafter, of every man, — a prize worth striving for, and for which the ecclesiastics possessed a favorable base of operations. In the early days of Christianity, the Church formed a society of voluntary cohesion, kept by persecution constantly purified of all unruly and worldly elements. The law of Christian love would therefore naturally lead all members to refer questions arising among themselves to the friendly arbitration of the bishops, and there would be little risk that any one would incur the scandal of appealing from their decision. When, however, the despised and oppressed sect grew rich and powerful, and when at length, dominant in the Empire, it became the channel through which avarice and ambition might reach their desires, the necessity arose of either abandoning this custom or giving legal validity to the episcopal judgments. Accordingly a law of Arca-

* Capit. Car. Mag. VI., ann. 806, § 23. — A variation of this regulation occurs among the fragments attributed to Theodore, Archbishop of Canterbury, toward the close of the seventh century. (Thorpe, II. 73.)

dius and Honorius, in 398, declares that those who desire to refer civil suits to the arbitration of bishops shall not be prevented from doing so; and another, in 408, renders final the decisions in such cases, and directs the secular officials to carry them into execution.* It will be observed that these regulations refer exclusively to powers of arbitration conferred by the consent of both parties; and that bishops had no absolute jurisdiction is shown by another law of the same Emperor, declaring that they had cognizance only of matters relating to religion, all secular cases belonging to the ordinary tribunals.† The only traces of any other judicial functions are in cases referred to bishops for decision by special command of the ruler, the occasional occurrence of which is manifested in the rescripts of Theodoric and the legislation of Justinian.‡ The latter monarch, however, bestowed upon them, in addition, a very considerable supervisory power over the ordinary courts, with authority to refer all doubtful cases to the Emperor.§

The Western Barbarians, however, were more ready to foster the judicial functions of the Church. Transferring, with the zeal of imperfect Christianity, to their bishops the blind venera-

* Const. 7, 8, C. I. 4. — The extent to which this system of episcopal arbitration was carried is strikingly exemplified by the complaints of St. Augustine, who declares the occupation thus forced upon him to be a serious impediment to the performance of his religious duties.

† "Quotiens de religione agitur, episcopos convenit judicare; cæteras vero causas, quæ ad ordinarios cognitores vel ad usum publici juris pertinent, legibus oportet audiri." — Lib. XVI. Cod. Theod. Tit. 11, l. 1. We may perhaps assume that such a declaration would scarcely have been thought necessary if the prelates had not been found trespassing on the ordinary functions of the courts.

‡ Theodor. Const. 67 (Goldast III. 49). Novel. 123, c. 21. — It is true that some supervisory power was conferred on the bishops, who were instructed to visit the prisons weekly, and to see that the prisoners were not unjustly treated; but the only remedy, when interference was necessary, was by complaint to the Emperor. Const. 22, C. I. 4.

§ Novell. 86, cap. 1, 2, 4. — When unreasonable delay occurred in a suit, the pleader could appeal to his bishop, who was to summon the judge to render justice, and if he was contumacious, was to report him to the Emperor for punishment. When partiality was feared, the pleader could demand that the bishop should have a seat on the bench. A suitor dissatisfied with a decision could appeal to the bishop, who then heard the case as between judge and plaintiff, and could condemn the former to make good any damage inflicted on the latter, subject to an appeal to the Emperor; and all this in both criminal and civil cases, — "sive de pecuniaria causa, sive de criminalibus."

tion felt toward the inspired ministers of their early mythology, they made it easy for the prelates to take advantage of the superiority which cultivated intelligence possesses over brute force. Besides, the rude and imperfect Barbarian codes, of course, rapidly became unsuited to the wants of the possessors of the fairest provinces of Rome, creating the desire for a more complex system of law; and as every man was entited to be judged by his ancestral code, there must have arisen a confusion of jurisprudence which an honest but untutored *rachinborg* was utterly unable to unravel. The impatient Frank, when engaged in litigation with a Roman, might disdain to submit to the jurisdiction of a judge of the conquered race, and might well prefer to lay his case before the bishop, whom he regarded with well-deserved respect; while, on the other hand, the Roman, in a quarrel with a Barbarian, would likewise desire the sentence of a judge whose decrees would command obedience when those of his compatriot might be received with undisguised contempt. We can thus readily understand the creation of an important voluntary jurisdiction, of which the extent can be gathered from a canon of the Council of Tarragona, as early as 516, forbidding the clergy to hear causes on Sundays, or to entertain criminal actions, while permitting them to dispense justice at other times, in civil cases, with the consent of parties;* while the Eleventh Council of Toledo, in 675, found it necessary to threaten deposition and perpetual excommunication against all ecclesiastics concerned in rendering sentences of death or mutilation.† The Wisigoths, indeed, were disposed to clothe their bishops with very extensive judicial functions, copied from the legislation of Justinian, without the check of Imperial supervision. The laws of Ricaswind, about this period, empower a plaintiff, who suspects his judge of partiality, to demand the association of the bishop with him on the bench; when bishops were selected as arbitrators by parties, their verdicts were rendered binding, and the court that

* Concil. Tarracon. can. 4.

† "His a quibus Domini sacramenta tractanda sunt, judicium sanguinis agitare non licet." — Concil. Tolet. XI. can. 6. So also in England in the eighth century: "Cavendum quoque est clericis ut non sint judices in condemnatione hominis." — Ecgberti Excerpt. cap. 156.

refused to execute them was visited with a heavy fine; and, finally, they were authorized to reverse all unjust decisions, either with or without the consent of the judge.* There is little evidence, however, that these vast prerogatives, which trenched so nearly on the royal power, had much practical effect in an age of turbulent anarchy, although the reverence of legislators might leave them a place on the statute-book. In France a provision somewhat similar is found in an edict of Clotair I., in 560, which directs that, in the absence of the king, the bishops shall correct the judges for any unjust sentences, in order that on further investigation the wrong may be set right.† This, if generally enforced, must have given to the Church a very extensive appellate jurisdiction, which could readily be made the instrument of immense influence; but that the exercise of judicial functions, although occasionally attempted by prelates, was not sanctioned by the canons, is shown by Gregory of Tours, who reproaches Badegisilus, the unclerical Bishop of Le Mans, with sitting as associate judge in secular tribunals, — evidently considering such proceedings to be as irregular as the military exploits of the rapacious prelate.‡

* L. Wisigoth. Lib. II. Tit. I. cap. 23, 29, 30. — The first and third of these laws, by far the most important in the power which they conferred, are retained in the Fuero Juzgo (Lib. II. Tit. 1, l. 22, 28), showing how thoroughly the influence of the bishops survived the wreck of the Gothic monarchy. It is curious, however, to observe that influence declining in Spain earlier than in the rest of Europe. The code known as *Las Siete Partidas* gives to bishops only an admonitory power over judges, and orders them to report unjust decisions to the king. (Part. I. Tit. 6, l. 48.) The same law forbids ecclesiastics to preside in secular cases "porque serie vergüenza de se entremeter del fuero de los legos los que señaladamiente son dados para servicio de Dios," — except in certain matters, the careful enumeration of which discovers considerable jealousy of clerical encroachments. This perhaps was essential when even monks assumed judicial functions, and it became necessary to prohibit such violations of their vows by another law of the same code. (Part. III. Tit. 4, l. 4.) That this was not uncalled for is shown by its retention in the Ordenamiento de Alcalá, a subsequent body of law, remaining in force until the latter half of the fifteenth century.

† "Si judex aliquem contra legem injuste damnaverit, in nostri absentia ab episcopis castigetur; ut quod perpere judicavit, versatim melius discussione habita, emendare procuret." — Const. Chloth., ann. 560, § 6.

‡ Greg. Turon. Hist. Lib. VIII. c 39. — How completely the views of the Church were altered in time, and how thoroughly the opposite principle became ingrafted into the institutions of Christendom, is well illustrated by the long line of ecclesiastical Chancellors of England, extending from the Saxon period, beyond the Refor-

All this passed away with the Merovingians. It was essentially antagonistic to the system of government of the new dynasty, and the institution of the *Missi Dominici*, — the most powerful element in the polity of Charlemagne, rendering any episcopal appellate jurisdiction superfluous, — must soon have destroyed any lingering traces of it that remained. We may therefore assume, that in the first half of the ninth century the privilege of adjudicating secular causes on the part of the bishops must have been limited solely to friendly arbitration. Even this the intelligent jealousy of the Emperors was desirous of abolishing; for there is a Capitulary expressly forbidding any one to select ecclesiastical judges, where there was a secular tribunal accessible, even if both parties consented.* The only judicial power remaining was therefore confined to that often conferred in special cases over private possessions, by which the vassal, whether layman or ecclesiastic, had the privilege of administering justice within his own domains, — a species of grant which became almost universal, and to which is attributable the origin of the seignorial "droits de justice." † This, although it conferred the power of life and death, ‡ was exclusively a private right, and, however extensive the terri-

mation, and even into the seventeenth century in the person of Bishop Williams. A relic of it, indeed, is still seen in the strangely incongruous functions of the Anglican bishops as members of the House of Peers, the High Court of Justice of the realm. — We may add, that the earliest Icelandic code extant, compiled about 1118, nearly a century after the conversion of the island, shows the bishops as a portion, *ex officio*, of the Lögretto, or chief central court (Grágás, Sect. II.), besides which they had a limited jurisdiction in their respective districts (Ibid., Sect. V. Tit. 31).

* "Qui autem episcopum vel sacerdotes aut clericos judicare sibi maluerint, hoc quoque fieri non permittimus." — Capit. Lib. V. c. 387. It is evident from this that the clause "ut episcopi justitias faciant in suas parochias" (Capit. Car. Mag., ann. 794, § 4) refers only to ecclesiastical questions, which indeed may be gathered from the context of the law itself.

† The form of this privilege generally ran, "In integra emunitate, absque ullius introitu judicum, de quaslibet causas freda exigendum, perpetualiter habeat concessa." See Marculf. Lib. I. Formul. 3, 4, 14, 16, 17, etc., where the frequency of its occurrence shows its universality. Indeed, a charter of Chilperic II., in 717, declares that all donations from the royal fisc carry this immunity with them. It was of very ancient origin, being alluded to in an edict of Childebert I. in 595, and of Clotair II. in 615.

‡ "Ut habeant ecclesiæ earum justitias, tam in vita illorum qui habitant in ipsis ecclesiis quamque in pecuniis et substantiis eorum." — Capit. Car. Mag. IV., ann. 806, § 1.

torial possessions of the Church might be, it was far inferior to the public supremacy to which the efforts of the clergy were directed. The forged donation of the Western Empire by Constantine might seem to cover this among its broad prerogatives; but that document had thus far been treated with silent contempt, and recourse was had to another source of undisputed authority. The Theodosian Code was held in great respect throughout Western Europe, where the legislation of Justinian was little known. The Wisigoths had even abandoned their ancestral jurisprudence in its favor, and, as the basis of all law for the populations not strictly barbarian, it was the "Lex Romana, quæ est omnium humanarum mater legum." * In this august and authoritative code a bold interpolation was effected, by which, among laws directly opposite in their tenor, one was inserted authorizing either party in a suit, at any stage of the proceedings, from the first plea to the time of rendering a verdict, to take the affair out of court and place it in the hands of a bishop, even against the remonstrance of the adversary; and the decision of the holy prelate was to be without appeal, and to be held inviolate throughout all time. This monstrous perversion of justice was then transferred to the Capitularies, where it was prefaced in the most solemn manner as having been adopted by the Emperor, with the consent of his subjects, as part and parcel of the law, binding on all the nations which yielded obedience to the Carlovingian sceptre. †

When such doctrines were successfully advanced, it is no wonder that their advocates could condense them into a legal maxim at once terse and comprehensive, — "The ecclesiastic judges all; he is judged by none," ‡ — and that they were

* Capit. Add. IV. c. 160.

† Capit. Lib. VI. c. 366. — Historians have generally admitted that Charlemagne was induced to adopt and promulgate this regulation. No original Capitulary, however, has been found containing it, and as it is completely opposed to the leading principles of his policy, we are irresistibly led to the conclusion that the sanction is also a forgery, worthy of that which it introduces. The latter still occupies its place in the Theodosian Code, and it was reserved for the learned Godefroy in the seventeenth century to demonstrate its falsity. (Lib. XVI. Cod. Theod. Tit. 12.)

‡ "Spiritalis judicat omnia; ipse autem a nemine judicatur." — Capit. Add. III. c. 20. This, which is merely 1 Corinth ii. 15, is an interesting illustration of the manner in which Scriptural texts were construed and applied to subserve the purposes of the period.

successful is abundantly manifest. In 857 we find Charles-le-Chauve commanding that all malefactors throughout the kingdom — murderers, burglars, robbers, thieves, oppressors, etc. — shall be tried by the bishops, and then handed over to the counts for punishment; and to render this more efficacious, all priests are directed to make lists of the offenders in their parishes, who are to be brought before the bishops, if contumacious under the reformatory efforts of their pastors.* The Church thus absorbed the whole administration of criminal justice, with its overwhelming influence; and, as if this was not sufficient, the power of sitting in judgment on the king himself, and of deposing him, was not only arrogated, but admitted. The sons of Louis-le-Débonnaire had made use of the authority of the bishops as a stalking-horse in their parricidal chase, and with the increase of episcopal prerogative the invention returned to plague its creators. Charles, guiltless in this respect at least, is seen addressing his prelates in 859, even in his hour of triumph after the recovery of his kingdom, — "I should not be dethroned, at least without being heard and judged by the bishops, whose ministry consecrated me as king, who are styled the thrones of God, in whom God resides, and through whom he makes manifest his decrees. To their paternal admonitions and punishments I am ready to submit, and now do submit myself." † It was therefore only the legitimate result of these principles when, in the thirteenth century, the popular lawgivers of Germany, framing a code for the people, declared that the Pope is the fountain of

* "Ex his mandat senior noster ut primum episcopali auctoritate judicentur, et sic postea a comitibus legaliter constrigantur." — Capit. Car. Cal., Tit. XXIV. §§ 3, 8.

† Capit. Car. Cal., Tit. XXX. § 3. — This was the acknowledgment and legitimate application of the doctrine advanced in an epistle attributed to the humble Clement, disciple of St. Peter, commanding for priest and bishop the same obedience as that rendered to God, under the severest penalties in this world and the next. "Eorum vero est vobis obedire ut Deo. Si autem nobis episcopis non obedierint omnes presbyteri, diaconi, ac subdiaconi, et reliqui clerici, omnesque principes tam majoris ordinis quam et inferioris, ac reliqui populi, tribus et linguæ non obtemperaverint, non solum infames sed et extorres a regno Dei," etc. Nearly as extraordinary was the principle that the laity should do nothing without the consent of the bishop. Strangers were not to settle in the diocese, nor were the inhabitants to leave it without his permission. "Animæ vero eorum ei creditæ sunt; ideo omnia ejus consilio agere debent, et eo inconsulto nihil." (Remigii Curiens. Episc. can. 4, 5. — Pseudo-Clement. Epist. 3.)

justice, temporal as well as spiritual, and that from him is derived the jurisdiction of emperors and princes, who are bound to execute his decrees.*

In the comprehensive struggle for independence, of which we have thus followed the details, but one point was wanting to release the Church from all subjection to the secular authority. As long as the king exercised the power of appointing to high places in the hierarchy, his control could not be entirely shaken off, and the inferiority of the ecclesiastic was implied as well as expressed. From the origin of the episcopal office, the choice of its incumbents was made by popular election, the community as well as the clergy enjoying the right of suffrage; and as this general principle was everywhere established, it is hardly worth while to trace the vicissitudes and exceptions to which it was occasionally exposed by time or accident. Of course, while the Christians continued a poor and insignificant sect, unacknowledged by the law, or recognized only by persecution, no interference by the secular magistrates was to be expected in their choice of ecclesiastical superiors. As the Church became wealthy and powerful, however, common prudence would dictate to the sovereign the necessity of some control over the selection of those who were in reality high officers in the state as well as spiritual dignitaries, and we have seen that the Emperors of both the East and West exercised the right of confirming him who was highest of all.

* "Ensem judicii sæcularis concedit Papa Imperatori. Ensis ecclesiasticus Papæ ipsi est concessus, ut debito tempore judicet sedens super equum candidum, et Imperator debet Papæ stapiam tenere. . . . . Hoc ipso indicatur quod omnem eum quicunque Papæ resistit, quemque ipse judicio ecclesiastico cogere non valet, ad obediendum debet Imperator et alii sæculares Principes cogere per proscriptionem." — Spec. Suevic. Introit. §§ 22, 23, 24. This is the more curious when we consider that at the time when it was written the Digest and the Institutes were already the objects of intense study and almost superstitious veneration, and that they are even alluded to in the code which is prefaced by such a declaration. That it was extracted by the compiler of the code from the sermons of Berthold of Ratisbon (Alex. a Daniels de Saxon. Spec. Orig. p. 19) does not render it the less an expression of the recognized doctrine of the period, that the Pope is the source of all authority. In the fourteenth century, the legal author of the Richtstich Landrecht, while jealously defining the limits of Papal and secular legislation, says, "Amplius dicunt clerici Pontificem etiam Apostolorum regulas rejicere posse" (Lib. II. c. 24), which is the legitimate result of "Nescitis quoniam angelos judicabimus? quanto magis sæcularia" (Pseudo-Pii Epist. 2).

The Church thus paid the penalty of its worldly aspirations, and the temporalities to which it clung with such tenacity weighed it to the earth, and rendered it the subject of those whom it aspired to master. As its territorial possessions grew wider, so grew the necessity of royal supervision over those who controlled them.* The tribute of military service owed by the lands was in itself a sufficient reason for the king to have some part in the nomination of those who were to render it; and though Charlemagne forbade ecclesiastics from bearing arms personally, he took good care not to exempt them from furnishing their quota of well-appointed troops. The theory thus was election by the diocese in general, confirmation by the king, and ordination by the metropolitan and his suffragans; but the right of confirmation implies the right of rejection, and the latter, in the hands of energetic or unscrupulous sovereigns, practically amounts to the appointing power. Scarcely had the Franks assured to themselves their rapid conquest of Gaul, when even the zealous piety of recent conversion could not restrain them from arrogating this important privilege as a portion of the royal prerogative, and the repeated allusions of Gregory of Tours to its exercise as a matter of course, show us that this was the rule and not the exception.† This invasion of the traditional rights of the Church was not submitted to without a struggle. In 557 the Third Council of Paris protested against the abuse of royal power, in a canon which directs that any appointee not duly elected

* We have not space to enter upon the history of territorial aggrandizement, which rendered the ecclesiastical body so formidable a portion of the feudal republic. The general facts are well known, and a minute investigation would require a treatise by itself. A single instance will sufficiently illustrate the result, when we mention that in the eleventh century the Abbey of Fulda held fiefs which were bound to furnish to the Imperial service six thousand well-appointed fighting men. (Engelhus. Chron. ed. 1671, p. 199.)

† Thus, taking the important diocese of Tours alone, we find in 520 the singular spectacle of two bishops conjoined, Theodorus and Proculus, "jubente beata Chrodielde regina." In a little more than a year they are succeeded by Dinisius, "per electionem præfati regis." Two years afterward, the see is occupied by Ommatius, "ex jussu Chlodomeris regis." (Hist. Lib. X. cap. 31, Lib. III. cap. 17.) An instructive instance is that which occurred in 517 in the bishopric of Auvergne, where St. Quintin was elected by the people, but a certain Apollinaris hastened to King Thierry, and "oblatis multis muneribus" was created bishop. (Lib. III. cap. 2.) Further examples would be superfluous.

should be refused ordination by the metropolitan and his suffragans, and that any episcopal traitor not keeping the engagement should be cut off from all communion with the rest.* How little practical influence this provision enjoyed when brought into contact with the brute force of the Merovingian kings, is exemplified by an instance which occurred a few years later. A certain Emerius had been installed as Bishop of Saintes, by command of Clotair I., under circumstances of peculiar irregularity, the king having dispensed with the services of the metropolitan in the consecration. At the death of Clotair, the offended Archbishop Leontius, relying on the presumable weakness of a new king, and perhaps also on the canon of Paris, assembled a synod, deposed the intruder, and sent a new bishop elect to Charibert for confirmation. The blood of Clovis took fire; the unhappy expectant, Heraclius, was banished after undergoing a savage punishment; Emerius was reinstated, and the Archbishop and his suffragans were visited with ruinous fines.† The endless struggle, however, continued. In 615 the Fifth Council of Paris made another effort to achieve independence, by pronouncing null and void the consecration of any candidate not duly elected by the people and clergy, with the approbation of the provincial bishops; ‡ but the attempt was vain, for when Clotair II. published the canons of the Council in a royal edict, thus giving them legal authority, he introduced a clause excepting the royal courtiers from the effects of the prohibition. § That this left matters as before we learn from a precept of Dagobert I., in 630, conferring the see of Cahors on Didier, his treasurer, who was not even in orders at the time. It speaks, indeed, of the consent of the people having been given, but not of their having elected the candidate; and the terms of the act itself, and also of the order to the Archbishop to consecrate the nominee, are those of

* Concil. Paris. III., can. 8.

† "Exactis a Leontio episcopo mille aureis, reliquos juxta possibilitatem condemnarent episcopos, et sic patris est ultus injuriam." — Greg. Turon. Hist., Lib. IV. cap. 26.

‡ Concil. Paris. V., can. 1.

§ "Vel certe si de palatio eligitur, per meritum personæ et doctrinæ ordinetur." — Edict. Chloth. II. § 1.

a master exercising his pleasure without a doubt as to its legality.* Even Marculfus, in giving the formulæ for such documents, couches them in terms of absolute command, and inserts no allusion to any elective franchise as having been exercised in favor of the recipient; though another formula of petition from the people, asking the royal approval of their choice, shows that the right of election was occasionally admitted, in strict subordination to the will of the sovereign,† and a passage in the Bavarian Code would indicate that the practice was the same in the Christianized portions of Germany.‡ In Spain, at the same period, a canon of the Twelfth Council of Toledo, held in 681, allowing no right of suffrage whatever to either clergy or people, shows that the royal power of nomination was even recognized and admitted by the Church. § Charlemagne, who, besides this traditional authority as king, perhaps held the right of investiture and the most absolute veto by direct concession from Adrian I., ‖ was not likely to allow his prerogative to become obsolete. When, therefore, in 803, he granted the privilege of electing their bishops to the people and clergy of the dioceses, he did it in terms which imply that it was a favor of the Imperial grace, and not a simple acknowledgment of a right. That it was so regarded is shown by its repetition being procured from Louis-

* Dagoberti Præceptum (Baluze). — Didier evidently considered himself as indebted for the bishopric to the king, and not to the people. He addresses Dagobert: "Cadurchæ Ecclesiæ cui (Deo auctore) ex jussu vestro præsideo." — Epist. Francor. 41. (Freher, Corpus Hist. Franc.)

† Marculf. Lib. 1. Form. 5, 6, 7. — That the absence of all allusion to popular election in these formulæ was not a mere oversight, but that they were intended for cases of absolute appointment, is shown by comparing them with the "Formulæ Promotionum Episcopalium" (Baluze, II. 591 et seq.), under the Second Race, in which the elective franchise is fully referred to.

‡ L. Baioar. Tit. I. Cap. 11, § 1.

§ Concil. Tolet. XII. can. 6. — The royal privileges appear to have been great at this time, and the subordination of the Church complete, when we see it admitted by another canon of this Council (can. 3) that excommunication was removable at the king's pleasure, and became null and void, *ipso facto*, in any one admitted to the royal table. This rule even found its way into the Carlovingian Capitularies (Baluze, II. 368), but does not seem to have been acted on.

‖ "Ut nisi a rege laudetur et investiatur episcopus a nemine consecretur." — Gratian. Dist. 63, can. 22. The authenticity of this grant has already been discussed in this journal, No. 190, pp. 73, 74.

le-Débonnaire in 816, shortly after his accession.* That the unquestioned legal right of confirmation or rejection was rigidly enforced, we may readily believe; for, even after twenty years of civil war had reduced the royal power to comparative insignificance, the privilege of popular election hardly amounted to more than the *congé d'élire*, — that ingenious fiction by which the Anglican Church reconciles Apostolic tradition with the supremacy of the Defender of the Faith. Thus in 845 the Synod of Thionville requests the sons of Louis to nominate incumbents for the sees then vacant,† and soon afterward the Synod of Verneuil petitions Charles-le-Chauve not to allow the see of Rheims to remain longer without a bishop, and also not to withhold his consent to the installation of Agius, who had a year previous been elected to the diocese of Orleans, and had been consecrated by Wenilo, his Archbishop.‡ So when some irregularity prevented the installation of Wulfadus, bishop elect of Langres, the Synod of Chiersy applied to Charles to appoint another; the king graciously permitted the Synod to elect a bishop, but they considered it necessary to obtain the royal confirmation of their choice, and they applied for it through the Arch-chaplain Hilduin in terms which mark how absolute was the prerogative of the sovereign.§

The change in tone wrought by a few years, therefore, becomes peculiarly significant when we find in the bold epistle addressed by the Neustrian bishops, in 858, to Louis-le-Germanique, then in undisturbed usurpation of his brother's kingdom, a declaration of independence, to the effect that the

* Capit. Car. Mag. I., ann. 803, § 2. Capit. Ludov. Pii, ann. 816, § 2. — As there is nothing said in these Capitularies of the royal assent being requisite, it has been assumed that the right of confirmation was then formally abandoned; but this is entirely at variance with the whole history of the period. If other proof were wanting, the Imperial control over Papal elections would in itself be sufficient, and that this control was exercised over bishops in general is proved to a demonstration by the Formul. Promot. Episcopal. VI. (Baluze, II. 603, 604), as well as by canon 22 of Concil. Paris. VI., ann. 829.

† "Monemus ut sedes..... Episcopos a Deo datos et a vobis regulariter designatos et gratia Sancti Spiritus consecratos, accipiant." — Capit. Car. Cal., Tit. II. § 2.

‡ Capit. Car. Cal., Tit. III. §§ 9, 10.

§ "Unde suggesserat eadem Synodus regi ut alterum ad regendum præfatam constitueret ecclesiam ..... obsecrantis hujus in hoc Hilduini consensum et deprecationem ipsius pro eo apud regem." — Flodoard. Hist. Remens. Lib. III. c. 24.

churches which they held were not benefices to be bestowed by the king at his pleasure, or resumed; and when, in 880, the unquestionable right of the sovereign to put forward a candidate for election was stigmatized by Hincmar, in a letter to the king, as a doctrine belched forth by hell.* The contrast is even more striking between Leo IV., in 853, humbly asking the Emperors Lothair and Louis II. to permit the consecration of Colonus as Bishop of Rieti, or, if they preferred, to bestow on him the see of Tusculum, — and Nicholas I., in 863, reproving King Lothair for using his influence to sway the elections of bishops in Lotharingia, and forbidding him to allow certain sees to be filled, until the Papal pleasure should be consulted.†

This last instance shows us the Pope endeavoring to grasp at the power which appeared to be departing from the king; and his successors followed it up with an energy which filled Europe with confusion for centuries. Nicholas, however, was disinterestedly anxious to free the Church from subjection to the temporal power; and two years later he laid down the rule that bishops were to be elected by the clergy alone, thus excluding the laity from their immemorial right of suffrage.‡ There were other rivals, however, eager to clutch at the fragments of the royal authority; and various allusions, in the Epistles of Loup of Ferrières, show that the bishops were stren-

* "Ecclesiæ siquidem nobis a Deo commissæ non talia sunt beneficia et hujusmodi regis proprietas ut pro libitu suo inconsulte illas possit dare vel tollere." — Capit. Car. Cal., Tit. XXVII. § 15. "Talia dicta infernus evomuit." — Hincmar, Epist. XIX. cap 3.

† Thus Leo, in 853: "Vestram mansuetudinem deprecamur . . . . . ut vestra licentia accepta, ibidem eum, Deo adjuvante, consecrare valeamus Episcopum. Sin autem in prædicta ecclesia nolueritis ut præficiatur episcopus, Tusculanam ecclesiam, quæ viduata existit, illi vestra serenitas dignetur concedere." — Gratian. Dist. 63, can. 16.

And Nicholas I., in 863: "Idcirco Apostolica auctoritate sub divini judicii obtestatione injungimus tibi, ut in Trevirensi urbe et in Agrippina Colonia nullum eligi patiaris, antequam relatum super hoc nostro Apostolatui fiat." — Nicolai Epist. 58.

About the same period we find Florus Diaconus stoutly denying the right of the sovereign to grant such promotion, though he admits that the royal assent may be desirable, — "ad cumulum fraternitatis," — but no further (Lib. de Elect. Episc. cap 4); as he also denies the authority of the Emperor to supervise the Papal elections (Ibid. cap. 6). His statements are principally interesting as showing the progress of the new ideas.

‡ "Electio ejus non a sæcularibus quibusque, sed a clero ecclesiæ, cum consensu primorum civitatis." — Epist. 82, cap. 4.

uously endeavoring to convert the necessity of their services in consecration into the prerogative of nomination, as the monarchs had previously done.*

These efforts, however, were fruitless. The necessities of the times were peculiarly opposed to such pretensions, for the poorer and more powerless were the kings, the more pressing became their wants. Services which they could not command had to be bought; and as the royal fisc was exhausted, they could be liberal only with the property of others. In the dismal times which followed, the arbitrary acts which purchased the temporary fidelity of the powerful by spoiling the weak, grew more and more frequent, and rich bishoprics and fat abbeys were the readiest means at hand to silence the hungry horde of rebellious chieftains. Even in 856 we find Charles-le-Chauve guilty of an indefensible exercise of authority in appointing a successor to St. Folcuin, Bishop of Térouane, before that aged prelate was dead, — an indiscretion rendered the more conspicuous by the frightful effects of the malediction pronounced by the incensed saint on the interloper; † and in 866 the same monarch cut short the deliberations of a synod on a knotty point of canon law by appointing, on his sole authority, Wulfadus to the important archiepiscopal see of Bourges.‡ When, indeed, about the same time, he bestowed the wealthy abbacy of St. Martin of Tours on Robert-le-Fort, the head of the Capetians, he little thought that he was founding a line of royal hereditary abbots, who for eight centuries would wear the mitre under the crown. The quarrel, perpetuated for ages, seemed endless, until the happy thought of a concordat enabled king and pope to divide the spoils which belonged to neither; but the true remedy was that suggested by the Emperor Henry V., when he offered to

* Epist. 79, 81, 98, etc. This doctrine speedily became enunciated as a rule (Hincmar. Epist. XIX. cap. 4, 6), and with no little show of ancient authority, as is indicated to a greater or less extent by many of the early canons. (Concil. Nicæni, can. 4; Laodic. can. 12; Antioch. can. 16; Carthag. II. can. 12.) In the Spanish collection of Martinus Bracarensis, by an interpolation in the Laodicean canon, the people were specially excluded from all participation in elections (Martin. Bracar. can. 1); but we have already seen that among the Wisigoths the kings had succeeded in having the appointing power transferred to themselves.

† Vit. Folcuin. cap. 13.

‡ Annal. Bertin., ann. 866.

surrender all the ecclesiastical rights demanded by the Pope, if the Church would abandon the temporalities which gave him a claim to the investitures. So thought Arnold of Brescia, who expiated at the stake his zealous efforts to purify the temple by divesting it of the worldly treasures which encumbered it. So, too, Dante thought, when he prophesied that the "Veltro" would reform the abuses which had so utterly perverted the designs and the principles of Christianity.*

Closely connected with the question of investitures was that of episcopal oaths of fidelity. The same reasons which enabled the sovereign to claim the right of confirmation warranted him also in demanding from the new incumbent the customary solemn promises that the powers intrusted to him should not be employed to the disadvantage of the monarch. We have seen that Charlemagne and Louis exacted this, even from the Head of the Church; that prelates of inferior grade were not exempted, becomes therefore a matter of course. When, in 802, the Emperor caused to be renewed the oaths which his subjects had previously given to him as king, he directed that it should be administered to all, laymen and ecclesiastics, without exception; † and though bishops are not specifically mentioned, the fact that they were included as a matter of course is shown by an allusion to them in a similar precept of Pepin, King of Italy, some years previously.‡ The form was in no way less stringent than that taken by laymen, being a comprehensive homage to the person of the monarch, secured by the customary oaths on the Gospels, or on relics of approved sanctity.§ That its binding force was admitted on all sides

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* "Non fu la sposa di Christo allevata
Del sangue mio, di Lin, di quel di Cleto,
Per essere ad acquisto d' oro usata: . . . . .
In vesta di pastor, lupi rapaci
Si veggion di quassù per tutti i paschi, ...
Ma l' alta providenza . . . . .
Soccorrà tosto, sì com' io concipio." — Paradiso, XXVII.

† Capit. Car. Mag. I., ann. 802, § 2.

‡ "Quomodo istud sacramentum juratum esse debeat ab Episcopis et Abbatibus sive Comitibus vel Vassis regalibus, necnon Vicedominis," etc. — Capit. Pippini, ann. 793, § 36.

§ "Sic me Deus adjuvet et ista sancta patrocinia." See the oath forced upon Hincmar of Rheims. Hincmari Opera I. 1125 (Migne's Patrologia, T. 125).

is manifested by the mutual accusations of perjury interchanged by the bishops of the contending parties, in 833, each faction taunting the other with rebellion.* The Church itself even recognized the episcopal dignity as duly held in virtue of this homage; for we find the Second Council of Aix-la-Chapelle agreeing that its violation shall entail the degradation of the offender and the loss of his preferment;† and in this the fathers of the Council were merely recording the established usage. In 794 a certain Bishop Peter, accused of treason, purged himself by the ordeal; and on thus proving his innocence, Charlemagne restored to him the position of which he had been deprived.‡ Such being the recognized subjection of the prelates as vassals of the crown doing homage for their sees, and liable to their forfeiture for infidelity to the sovereign, we see the completeness of the revolution when we find the Neustrian bishops, in their address to Louis-le-Germanique, in 858, boldly declaring that, unlike laymen, they were not obliged to perform any act of homage or to take any oaths.§ This effort was temporarily successful; for though, some fifteen years later, Charles forced the reluctant Hincmar of Rheims to corroborate his suspected loyalty by the oath which had not been exacted at his installation, yet

* "Subjungitis, memorem me esse debere jurisjurandi causa fidei factum Imperatori. Quod si feci in hoc volo vitare perjurium. . . . . Vos tamen quia proculdubio jurastis et rejurastis; promittentes ei erga illum omnia fideliter vos agere . . . . . perjuri estis." — Agobardi de Comparat. utrius. Regim. The Imperial party enunciated the rule in the clearest manner, — "Episcopos in causa fidei jusjurandum præstare solitos Imperatori," (Goldast. I. 188,) — showing, perhaps, that the rebel princes were endeavoring to obtain ecclesiastical support by favoring the pretensions of the Church to independence.

† "Aut etiam sacramentum fidelitatis illi promissum violaverit proprium gradum canonica atque synodali sententia amittat." — Concil. Aquisgr. II., can. 12.

‡ "Clementia tamen regis nostri præfato episcopo gratiam suam contulit, et pristinis honoribus eum ditavit." — Capit. Car. Mag., ann. 794, § 7.

§ "Et nos episcopi, Domino consecrati, non sumus hujusmodi homines ut sicut homines sæculares, in vassallitico debeamus nos cuilibet commendare . . . . . aut jurationis sacramentum, quod nos evangelica et apostolica atque canonica auctoritas vetat, debeamus quoquo modo facere." — Capit. Car. Cal., Tit. XXVII. § 15. This was founded on the immunity from judicial and purgatorial oaths, which, on the authority of the False Decretals, ecclesiastics about this time endeavored to obtain. (Gratian. caus. II. q. 5, can. 1, 2, 3; Pseudo-Cornel. Epist. 2.) Promissory oaths, which the bishops thus denied, were nevertheless allowed. (Gratian. caus. 32, q. 1, can. 1.)

the humiliated prelate had his revenge. He takes especial care to chronicle how, at the coronation of Louis-le-Bègue in 877, the bishops merely performed commendation for the churches and promised fidelity, while the abbots and nobles commended themselves and took the oaths prescribed by ancestral custom.* This pretension, however, was too directly opposed to the tendencies of the age, which was rapidly resolving all institutions into the forms of the nascent feudal system, and, though long and hotly contested, it was never established. Yet the declaration of the bishops, in 858, was a correct index of their position at the time, and an example may serve to mark the contrast wrought by a few years. In 835, when Louis-le-Débonnaire was reinstated after the second rebellion of his sons, the bishops of the defeated party were put on trial. The primatial dignity of Lyons could not save St. Agobard from degradation; the traditional veneration for St. Remi did not preserve his unworthy successor Ebbo, while less distinguished prelates sought safety in flight.† When, in 859, Charles-le-Chauve demanded judgment against Wenilo, Archbishop of Sens, who, under circumstances of peculiar treachery, had been a leading instrument in the usurpation which for a moment placed Louis-le-Germanique in possession of his brother's kingdom, the royal prosecutor could obtain no satisfactory action, and was obliged to receive the traitor again into favor.‡

While thus striking at all the institutions which subordinated the Church to the state, it must not be supposed that the sagacious originators of the movement had endeavored to create an irresponsible body of petty ecclesiastical despots, each supreme in his own diocese or province, to become eventually the priest-king of an insignificant territory. Even as the sacerdotal character was elevated above the laity, so was the power of the hierarchy, in its successive grades, developed in the comprehensive scheme of Isidor and Adrian. Transmitting step by step the new powers thus acquired to the supreme head at Rome, the whole body of the Church was

* "Episcopi . . . . . profitentes secundum suum scire et posse . . . . . illi fideles fore; abbates autem et regni primores ac vassalli regii se illi commendaverunt, et sacramentis secundum morem fidelitatem promiserunt." — Annal. Bertin., ann. 877.

† Astron. Vit. Ludov. Pii, ann. 835. ‡ Annal. Bertin., ann 859.

rendered compact and manageable, either for assault or defence; and it acquired the organization which enabled it not only to preserve the advantages gained, but to extend in all directions its influence and authority. Had the bishops maintained their individual independence, they could have accomplished nothing beyond the objects of personal ambition, as did the nobles who were then carving out their hereditary principalities; and even these would have been temporary, for they would, in their isolation, have succumbed one by one under the attacks of the rapacious barons who controlled the military power of their provinces. What the temporal sovereign lost, however, was transmitted through the hierarchy to the Pope, and the Church acquired the unity which was requisite to carry it through the stormy period of the tenth and eleventh centuries.

Our rapidly narrowing space warns us to be brief; and the history of Papal encroachments on the independence of the priesthood and of the secular authorities is a subject too extended to be thoroughly discussed within the limits remaining to us. If, therefore, we dismiss these questions with a rapid glance at one or two of the points involved, it is not from a want of appreciation of the interest and importance of those which we must leave untouched.

The main source of the practical supremacy of the Pope over the Church arose from the universal jurisdiction assumed by the Roman Pontiff. When it was once fairly established that all sentences on ecclesiastical offenders were liable to revision and reversal at the hands of the Pope, he became the sole and irresponsible arbiter of all questions, with a corresponding right to interfere in every transaction affecting the internal government of any portion of the Church, — a power which in skilful hands was limited only by the moderation of the possessor. In early times, the dignity of Rome frequently caused its bishop to be chosen as judge in special cases, as when Constantine nominated Pope Melchiades as head of a tribunal for the trial of Cæcilianus, Bishop of Carthage;* but the special rescript of the Emperor shows that this was a power conferred by him in

* Euseb. Hist. Eccles. Lib. X. c. 5.

a particular instance, and not an inherent prerogative of the Holy See. The canons of the Council of Antioch show that as late as 341 no such prerogative was thought of by any portion of the Church;* but we have seen that it took its origin a few years later in the fears of the Latin Church when persecuted by the Arianism of the East, and the modest decree of the Sardican Council eventually received an extension at which the heedless fathers who originated it would have stood aghast. As long as bishops were subject to the jurisdiction of the secular tribunals, this power of the Pope regarded only lapses of faith and breaches of ecclesiastical discipline, and the privileges of the Roman Pontiff as ultimate appellate judge were limited to religious matters alone. Even in this more limited sphere the custom was by no means established, for the Sardican canon, enacted for a temporary purpose, was soon forgotten or passed over in silent contempt, to be subsequently resuscitated. The Second Œcumenic Council, held at Constantinople in 381, recognized no appeal beyond the synod of the province, and commands that none shall be entertained.† So a law of Arcadius and Honorius, in 400, providing penalties for bishops who refused to submit to sentences of degradation pronounced "residentibus sacerdotibus," makes no allusion to any appeal or reference to Rome;‡ and even more instructive was the con-

* Concil. Antioch. can. 15 expressly declares that a bishop unanimously condemned in his provincial synod "ulterius judicari non poterit"; while the careful provision for the different cases which might arise (can. 4, 12, 14) shows that the customary appeal was to the Emperor, and that no ecclesiastical power superior to that of a synod existed. The authority of these canons is proved by their confirmation at the Council of Chalcedon.

† "Si quis autem, his . . . . contemptis, ausus fuerit vel imperatoris aures molestia afficere, vel sæcularium principum judicia, vel universalem synodum perturbare, neglectis diœcesis episcopis, eum nullo modo esse ad accusationem admittendum" (Concil. Constantinop. can. 6), — showing that the secular power was still invoked to decide upon church quarrels, and that no thought existed of referring such questions to the Bishop of Rome.

‡ Lib. XVI. Cod. Theod. Tit. 2, l. 35. — It is true that Baronius (ann. 381, No. 2-7) produces, from the inexhaustible storehouse of the Vatican, a rescript of Gratian and Valentinian, dated 381, directing that the decisions of the Roman bishop, acting with seven others, shall be final, that metropolitans shall of necessity be judged by the Pope, and that, where the provincial judges were liable to suspicion, the accused might demand to be tried by the Pope, or by fifteen neighboring bishops; but this change of venue had to be made before the trial, as no revision of a sentence was allowed, — "modo ne post examen habitum quod definitum fuerit integretur."

troversy between Rome and Carthage on the subject of the appeal of Apiarius, in the first quarter of the fifth century. In this the effort of Zozimus to attribute the Sardican canon to the Council of Nicæa shows how little weight he felt belonged to the former; and as the whole question turned upon this point, and as, when the imposture was demonstrated, the African Church triumphed, the concurrent testimony of all parties stamped the Synod of Sardica as of no permanent authority. The victors signalized their success by a canon denouncing excommunication against all who should venture to appeal to Rome from a sentence regularly pronounced at home;* and the triumph was the more significant, as the African Church was at that time the stronghold of Orthodoxy, under the leadership of St. Augustine.

When Justinian, however, granted to bishops the right of exclusive trial by their peers, the importance of the prerogative increased immensely; and as the whole body of ecclesiastics gradually threw off their subjection to secular jurisdiction, the Popes exerted themselves to substantiate a claim which rendered the intimate dependence of the Church upon its head correspondingly strict. Accordingly, we find that the clear perceptions which planned and executed the forgeries laid especial stress upon this appellate power, and lost no opportunity to inculcate its necessity and to remove all obstacles to its exercise. The authority of the primitive Church was invoked for new rules by which bishops under examination could elect to appear at once before the Roman tribunal, and indeed were directed to do so if they thought their fellow-suffragans preju-

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Even these restricted prerogatives, however, were merely granted as a temporary relief to themselves by princes wearied with the internecine strife between Damasus and his unsuccessful competitor Ursicinus, and bewildered with the ceaseless wranglings of the Arian controversy. That such a law could at most have possessed only temporary authority is shown by its omission from the Theodosian Code, and by the opposite tendency of that of Arcadius.

* "Ad transmarina autem qui putaverit appellandum a nullo intra Africam in communione suscipiatur." — Concil. Milevit., can. 22. The manner in which Zozimus had insisted on the binding force of the Nicæan canons, as quoted by him, shows that he keenly appreciated the importance of the substitution which he attempted, and that it could scarcely have been accidental. The labored arguments of Baronius (ann. 419, No. 65 - 71) to prove that it was of little moment, are their own best refutation.

diced against them, — allowing us to infer, from the warmth of the invitation, that they were at liberty to presume that such manifestation of preference for the Holy See might cover a multitude of sins.* Other canons were promulgated by which the trial of a bishop could be undertaken only by a synod called for that purpose by the special command of the Pope,† and a still further extension of power was assumed, by the production of a regulation under which no verdict could be rendered until it had been submitted to the Papal court and there approved.‡ In fact, the constant iteration of these points throughout the False Decretals, in every possible variation of language, shows the importance attached to them, and the magnitude of the change which they involved in the received canons of discipline. When innovations so bold and so subversive of the traditional doctrines of church government could be confidently put forward and arrogantly insisted on, we can readily account for the immense increase of Papal prerogative, which brought under its influence every part of the ecclesiastical body, even to its ultimate fibres.

A glance at two or three transactions of the period will show how little respect was paid to these canons until after the middle of the century, and how they were at length put in force by the vigorous action of Nicholas I. In 835 Ebbo, Archbishop of Rheims, was condemned by a synod for his active share in the rebellion against Louis-le-Débonnaire. Five years later he

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* "Placuit ut si episcopus accusatus appelaverit Romanum pontificem, id statuendum quod ipse censuerit." — Capit. Lib. VII. cap. 315. (Ingilram. c. 23; Pseudo-Julii Epist. 3.)

"Nam si ipse metropolitanum aut judices suspectos habuerit, aut infestos senserit, apud primatem diœceseos aut apud Romanæ sedis pontificem judicetur." — Capit. Lib. VII. cap. 314 (Ingilram. c. 20; Pseudo-Julii Epist. 3).

"Libere apostolicam appellent sedem, atque ad eam quasi ad matrem confugiant, ut ab ea (sicut semper fuit) pie fulciantur, defendantur et liberentur." — Ivon. Decret. Pt. V. can. 257. (Pseudo-Julii Epist. 3.)

† "Nullus episcopus nisi canonice vocatus et in legitima synodo suo tempore apostolica auctoritate convocata . . . . super quibuslibet criminibus pulsetur, id est, judicetur, audiatur, vel impetatur. Sin aliter præsumptum a quibuslibet fuerit, in vanum deducatur quod egerint." — Capit. add. IV. cap. 24. (Ingilram. c. 3; Pseudo-Julii Epist. 2; Pseudo-Marcelli Epist. 1.)

‡ "Quamquam comprovincialibus episcopis accusati causam pontificis scrutari liceat, non tamen diffinire, inconsulto Romano pontifice, permissum est." — Remig. Curiens. Episc. can. 39. (Pseudo-Victor. Epist. 1.)

was forcibly reinstated by his patron, the Emperor Lothair; but on the defeat of the latter he was obliged to fly, after enjoying his recovered dignity for about a year. After some time he went to Rome and appealed to Sergius II., who only restored him to communion. Hincmar, who was installed in the see of Rheims in 845, of course applied for his pallium, which gave Lothair the opportunity of forcing Sergius to inquire into the previous proceedings. The investigation, however, was a mere farce. Sergius did not venture on the examination himself, and did not even attempt to send a legate, nor did Ebbo dare to appear before the synod which assembled for the purpose of verifying Hincmar's position; the assembled bishops contented themselves with forbidding Ebbo to assume the rank from which he had been degraded, and Sergius withdrew from the affair by sending his pallium to Hincmar.* Twenty years later Nicholas heard that Hincmar had degraded certain priests who owed their ordination to Ebbo, — probably during his term of reinstatement. This Pontiff's vigorous action contrasts strongly with his predecessor's hesitation, for he wrote at once to Hincmar asking him to restore them. If he could not conscientiously do so, he was commanded to summon a council, whose decision, with the testimony taken, was to be submitted to Nicholas for his final action, — and all this under threats of instant penalties for disobedience.† In 858, Wenilo, Archbishop of Sens, was desirous of deposing Herman of Nevers, on the ground of insanity. The favor of Charles supported the threatened prelate, and the suffragan bishops hesitated to assist their metropolitan. Wenilo, to accomplish his purpose, therefore, on the authority of the False Decretals, referred the matter directly to Nicholas I., without preliminary trial; and the answer of the Pontiff, complimenting him on his reverence for the See of St. Peter, and contrasting it with the independence of those who were not ready to perform such acts of obedience, betrays in every line the joy of one who hopes to gain an unlooked-for victory, and who is receiving aid as welcome as it was unexpected.‡

* Flodoard. Hist. Remens. Lib. II. cap. 20.
† Nicolai I. Epist. 89.
‡ Lup. Ferrar. Epist. 130. Nicolai Epist. 1.

The battle between centralization and independence was, however, fought in the case of Rothadus, Bishop of Soissons. A regularly organized synod, under Hincmar, condemned and deposed Rothadus, without seeking from Rome a confirmation of the sentence, or heeding the appeal of the convicted bishop from the decision, which was put into execution after he had vainly demanded a reference to the Pope.* This was too flagrant a denial of the new doctrines, and too favorable an opportunity for their vindication, for the vigilant Nicholas to overlook. Branding the verdict with nullity, he accordingly evoked the case to Rome, but he met a stubborn resistance. Rothadus was not permitted to cross the mountains until after the most vigorous and repeated threats and appeals to the bishops of France, to the king, and even to the queen. Nicholas triumphed. Rothadus at last appeared in Rome, where for nine months he awaited his accusers. In sullen dignity they held themselves aloof, and the sentence was reversed. Another struggle ensued to procure his reinstatement; but in this also, by liberal threats of excommunication, Nicholas was successful, and the supreme jurisdiction of the Head of the Church was decisively vindicated.† The Gallican bishops had maintained that when in the trial of a bishop questions arose not provided for in the canons, then, and then only, the authority of the Holy See was to be invoked, — a reasonable interpretation, which moved the indignation of Nicholas to a high degree, — and Hincmar asserted to the last that the Pope had usurped a power to which he was not rightfully entitled.‡ Incidental to this discussion was one by which the authority of the False Decretals was affirmed and enforced. The bishops had cast some doubt, if not upon their authenticity, at least upon their valid-

* Annal. Bertin., ann. 862.

† Nicolai Epist. 33–38, 47–49, 60, 71–77. Anastas. sub. Nicol. Pap. I.

‡ Hincmar. Epist. 2. Annal. Bertin., ann. 865. His expression is "Rothadum a Nicolao Papa non regulariter sed potentialiter restitutum." — The doctrine that an appeal to Rome lay only in doubtful cases he adhered to, notwithstanding the indignation of Nicholas, and he again enunciated it in an epistle to Adrian II., concerning Hincmar of Laon, in 872. The universal right of appeal he stigmatizes as "nova lege, priscis tam publicis quam ecclesiasticis contraria, imo ordine novoque more habetur, ut nonnisi a vobis, et Romæ valeat judicari pro his excessibus de quibus habentur certa sacrorum canonum ac legum decreta." (Goldast. I. 206.)

ity, to which Nicholas angrily replied, that they might as well call in question the authority of the Old and New Testaments, because they were not to be found in the ancient collections of canons.* In this double victory we learn therefore both what the internal regulation of the Church had been, and what it was rapidly becoming under the influences which tended to subject it to the control of a single mind for good or for evil.

The evil inseparable from the new system was not long in making itself felt, and its more superficial effects became early the subject of complaint. The conviction was soon universal, that for whatever crimes an ecclesiastic might be condemned at home a valid reversal of sentence was readily procurable from Rome, which invited such applications so pressingly, and no doubt understood their pecuniary fruitfulness. The Transalpine Church grew restless under the insubordination and vice naturally resulting from this state of things, and in 878 Charles-le-Chauve addressed to John VIII. a long and earnest remonstrance, in which he describes the subversion of discipline which it entailed. He speaks of the bishops who, appealing from the just sentences of their metropolitans, felt secure that the distance and dangers of the journey would protect them against the production in Rome of the testimony which proved their guilt; of the priests who, after episcopal condemnation, disappeared, no one knew whither, until their return with a letter of acquittal showed that a voyage to Rome had not been fruitless; and he dwells especially upon the protection which this system gave to concubinage, then frightfully prevalent among the clergy.† The temporal power, however, was vanquished by this time, and Charles did not venture to put an end to the evils which he so correctly appreciated.

While the Pope was in this, as in many other particulars, acquiring almost unlimited control over his fellow-churchmen,

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* Nicolai Epist. 75.

† Goldast. II. 34–40. We see by this that the appellate jurisdiction of Rome already extended over the lower orders of the priesthood. Comparing this with Capit. Carol. Mag., ann. 794, c. 4, in which the royal court is designated as the ultimate tribunal in all such cases, we perceive how rapidly the power and influence of the Holy See had grown.

he was likewise rapidly extending his power over secular potentates. In this, the most efficient instrument was perhaps the forged donation of Constantine to Sylvester I. In examining this remarkable document, one hardly knows which to admire most, the boldness that could expect belief in it, or the credulity that was ready to admit that the first Christian Emperor transferred the seat of empire and founded his new Rome for the sole purpose of establishing the Popes in undisputed and undivided possession of the West, and of rendering the successors of St. Peter inheritors of Augustus. We read, in the style of an eighth-century notary, a formal *donation-entre-vifs* of the Western Empire and its appurtenances, to be held and enjoyed with all the Imperial rights in independent sovereignty, as superior to that of the Emperors as spiritual things were superior to temporal, — and all this mingled with puerile directions as to the trappings and properties of the Pope and his spiritual court, crowns, white horses, linen garments, and felt shoes. Armed with such title-deeds and the Leonine Constitution, — which barred all alienation of Church property, — the Roman Pontiff was the rightful owner of Western Europe, and kings held their territories by his sufferance. The gratitude of Adrian I. for the comparatively insignificant beneficence of Charlemagne was too openly manifested for us to suppose that ideas of such magnificent acquisitiveness could then have been entertained; and, though appetite grows by what it feeds on, when, a few years later, in 776, the donation of Constantine was produced from the Papal manufactory, it was quoted timidly by Adrian to the Frank, as a hint that he might not improperly imitate a munificence which rendered his generosity absolute niggardness. To this the stern founder of the new empire turned a deaf ear, nor does his disregard of the claims thus put forth appear to have interfered with the good understanding between the respective heads of Church and state, whose mutual support was mutually necessary. His successor, Louis, with all his reverence for ecclesiastical authority, paid as little respect to the extravagant pretensions of the grant; and when he, too, in 817, made a donation to the Holy See, confirming those of Charlemagne and of Pepin, he took care to reserve to himself the sovereignty of the territories whose

usufruct he bestowed on St. Peter.* That this sovereignty was not merely nominal, but active, is sufficiently established by facts to which we have already alluded. If more be needed, it may be found in the edict of Lothair in 824, wherein, while enjoining on the inhabitants of the Roman territory the utmost respect and obedience toward the Pope, his instructions to the dukes, counts, and judges, with regard to the exercise of their functions, and his appointment of *Missi* to supervise their dispensing of justice, prove the complete jurisdiction which he assumed without protest or objection on the part of Eugenius.† If the strong government of the united Franks, however, repressed the aspirations of ambitious but prudent Pontiffs, the dissensions which ensued, and the final disruption of the Empire, afforded the opportunity which had been needed. This forgery, lying latent with those of Isidor and Ingilram, was roused from its slumbers, and, excepting an occasional expression of doubt, for centuries the Imperial liberality of Constantine was received as an indubitable fact, which it was rank heresy to call in question.

The man was not wanting to the opportunity. The circumstances which we have briefly sketched had placed in the hands of the Church weapons of vast and indefinite power. The times,

* "Salva super eosdem ducatus nostra in omnibus dominatione, et illorum ad nostram partem subjectione." (Decret. Confirmat. Lud. Pii.) This clause, and a succeeding one by which the Emperor reserves the right of interference in cases of tyranny and oppression, dispose us strongly to regard the document as genuine. Had it been fabricated in the eleventh century, as has been suggested by critics, Catholic as well as Protestant, these expressions would certainly not have been inserted, as they were directly opposed to the efforts then making to free Italy from Teutonic influence, and to release the Holy See from the traditional supervision of the Emperors. The abnegation of the right to confirm the Papal elections is probably an interpolation of the later period, as also the extensive donations of territory in middle and southern Italy, which was either retained by the Carlovingian Emperors or never belonged to them. These concessions suited exactly the pretensions of Gregory VII., and his successors have doubtless swelled what was a very simple renewal of the benefactions of Charlemagne into the formidable dimensions which have caused its rejection by candid historians of all parties. Muratori's apologies for his incredulity (Annal. d'Italia, ann. 817) may excite a smile; but an opposite emotion is called for by the confident assertion of Baronius (ann. 817, No. 14), that four authentic copies exist in the Vatican Manuscripts. The attempted extension of territorial acquisition may be classed with the similar fictitious donation of Charlemagne, which Anastasius had before him, but which has since been seen by no one.

† Baluze, II. 317–320.

too, were ripe for their employment, the necessities of the age demanding an intellectual tyranny to coerce and counterbalance the countless blind and aimless despotisms of individual chieftains, who were rapidly crushing out what little mental life was left in Europe. The arm to wield those weapons was found when Nicholas I. ascended the pontifical throne. To the service of the cause he brought a dauntless spirit, an unconquerable will, an unbending energy, a prudent daring, and a knowledge of the men and of the tendencies with which he had to deal, that enabled him to establish the principles he espoused.* To illustrate the mannner in which he reduced to practice the theories of the False Decretals, it may be worth our while to recount the history of the Divorce of Teutberga, an affair which marks an era in ecclesiastical annals.

On the retirement of the Emperor Lothair, his son, of the same name, succeeded to that portion of his dominions which from him took the name of Lotharingia, modernized into Lorraine, and extending from Switzerland to the mouths of the Rhine. Married, in 856, to Teutberga, the uncontrolled licentiousness of the young king led him within the next year to abandon her for a succession of concubines, one of whom, Waldrada, succeeded at length in permanently captivating his fickle passions and weak understanding. The favorite resolved to share her paramour's crown, and Lothair, eager to secure her smiles at any cost, entered vigorously into the disgusting plot. A charge of the foulest incest was brought against the unhappy queen, who, by means which can readily be guessed, was forced to a confession. Condemned to perpetual penitence in a convent by the prelates of Lotharingia assembled in the Synod of Metz, she succeeded in escaping to France, where she was duly protected by Charles-le-Chauve, with the true Carlovingian desire of nursing trouble for his nephew. Meanwhile Lothair caused another synod to be convened at Aix-la-Chapelle, where, on stating his piteous case, deprived of a wife and unable to restrain his passions, the

* The churchmen of his own period, when not themselves outraged by his imperious authority, recount his exploits with honest professional pride. "Regibus ac tyrannis imperavit, eisque acsi dominus orbis terrarum authoritate præfuit" — Regino, ann. 868.

charitable bishops, after due deliberation, decided that a woman stained with the crimes of Teutberga was not canonically a wife, and that he was at liberty to marry. His nuptials with Waldrada were immediately celebrated, and Gunthair, Archbishop of Cologne, the instigator and manager of the plot, received his reward in the dishonor of a niece whose promised elevation to the throne had been the prize held out for his co-operation. Lothair, in his pollution, might forget the external world, but it did not forget him. Charles-le-Chauve, his uncle, hankering after the fertile plains of Austrasia, began to hint that his nephew had forfeited all claim to human society, and Teutberga's powerful family urged her appeal to the central arbiter at Rome. The occasion was one in which the common feelings of mankind would excuse any stretch of avenging prerogative, and Nicholas seized it with vigorous joy. According to Isidor, the holy Calixtus I. had decreed that an unjust sentence, rendered under the pressure of kings or potentates, was void;* an axiom which, though morally true, carried with it the dangerous corollary that, if it meant anything, there must be some one to decide upon the justice of the sentence, and if a king had procured it, there remained only the Pope to revise it. As supreme judge of all questions, Nicholas accordingly addressed himself to the work. To his first legates Lothair simply responded, that he had only complied with the decrees of the national Synod; and the legates, heavily bribed, advised him to despatch to Rome Gunthair and his tool, Thietgaud, Archbishop of Treves, who could readily make all things right with the Holy Father. The legates on their return had to seek safety in flight from the indignation of Nicholas; but the two archbishops, in the

* "Injustum ergo judicium et definitio injusta, regio metu et jussu, aut cujuscunque episcopi aut potentis, a judicibus ordinata vel acta, non valeat." (Ivon. Decret. Pt. V. cap. 235; Pseudo-Calixt. Epist. 1.) Benedict the Levite gives it in a somewhat abbreviated form, Capit. Lib. V. c. 405.

The comparison is instructive between the vivacity of Nicholas and the prudent reticence of Adrian. A moralist would find it hard to draw a line between the connubial irregularities of Charlemagne and those of Lothair; but Hermengarda found no puissant protector to force her inconstant husband into the tortuous paths of dissimulation, or to justify wrong by cruelty. When Charlemagne grew tired of a wife, he simply quitted her and took another; nor would Adrian or Leo have thanked the meddling fool who counselled interference.

self-confidence of craft and stupidity, appeared before the synod called for the purpose, and presented the Acts of the Synods of Metz and Aix, in the full expectation of their authoritative confirmation. The deliberation was short; the two prelates were recalled to hear sentence of deposition from their sees and degradation from the priesthood; the Synod of Metz was stigmatized "tanquam adulteris faventem, prostibulum"; and a sentence of excommunication was suspended over the heads of all the Lotharingian prelates, to be removed only by prompt retractation of their acts and individual application to Rome. The proceeding was somewhat violent, as it amounted to condemnation in the absence of the accused, with no array of witnesses and testimony such as the canons required,—even the Acts of the Synods not having been acknowledged by the archbishops without equivocation. Gunthair, breathing furious revenge, and Thietgaud, stupefied by the blow, betook themselves at once to the Emperor Louis, Lothair's brother. He listened to their story, and, eager to avenge his brother and to suppress the rising insubordination of the Pontiff, he marched directly on Rome. The fasts and prayers of the Pope availed little against the reckless soldiery of Louis; a massacre ensued, and Nicholas, escaping in a boat across the Tiber, lay hidden for two days, without meat or drink, in the cathedral of St. Peter. A sudden fever, however, opportunely laying hold of the Emperor, there were not wanting counsellors who attributed it to the sacrilege committed. Louis therefore, sending for Nicholas, made his peace and withdrew, commanding the archbishops to return home and consider themselves degraded. Thietgaud, a fool rather than a knave, submitted without further resistance; but Gunthair addressed an epistle to his brother bishops, exhorting them to repel the encroachments of the Papacy, which was aspiring to the domination of the world, and retorting on the Pope his sentence of excommunication. This document his brother Hilduin, an ecclesiastic, laid on the tomb of St. Peter, after forcing an armed entrance, and killing one of the guards. On their return home, Thietgaud abstained from officiating; but Gunthair, still breathing vengeance, took possession of his diocese, until the frightened Lotharingian bishops induced Lothair to

depose him, while they individually and humbly made their peace with Rome, submitting to all the requisitions of the Pontiff.* Another legate, Arsenius, was sent with instructions to put into effect the threatened excommunication of Lothair in case of his perseverance in his iniquity, and with letters to Charles-le-Chauve and Louis-le-Germanique, in which the conduct of their nephew was denounced with a freedom of acerbity till then unknown in the intercourse of popes with kings.† Lothair yielded to the storm, professed himself in all things an obedient son of the Church, put away Waldrada, who promised to seek absolution at Rome, and took back the unfortunate Teutberga, under menaces of eternal punishment in the name of God and St. Peter. Then all was again confusion; Waldrada escaped from the custody of Arsenius and returned to her infatuated lover, while the queen was subjected to every species of humiliation and oppression. But Nicholas was equal to the strife which he had provoked, and on which he had staked the future of the Papacy, and, indeed, of Christian civilization. Waldrada he excommunicated; Charles-le-Chauve, with whom Teutberga had again taken refuge, he encouraged with a laudatory epistle, mingled with threats concerning a rumored arrangement by which an abandonment of the cause was to be purchased by a cession of territory; and, in spite of the interference of the Emperor Louis, he caused another synod to confirm the degradation of the

* It is interesting to mark the contrast between the first and second half of the century. When, thirty years before, Gregory IV. came to the Field of Falsehood in the train of Louis-le-Débonnaire's rebellious sons, the bishops of Louis's party stoutly declared that, if he came to excommunicate, he would return excommunicated, as he had no such authority under the ancient canons of the Church, — "nullo modo se velle ejus voluntati succumbere, sed si excommunicaturus adveniret, excommunicatus abiret, cum aliter habeat antiquorum auctoritas canonum." (Astron. Vit. Lud. Pii, Cap. XIV.) The fact that in the two cases the respective positions of right and wrong were reversed between the parties, makes no difference as regards the question of obedience and subordination.

† Hincmar, notwithstanding his zeal for the Church and his activity in favor of Teutberga, calls attention to the altered tone of the Pontiff toward crowned heads, and evidently disapproves of the bullying invective which Nicholas inaugurated, and which proved so potential. "Non cum Apostolica mansuetudine et solita honorabilitate, sicut episcopi Romani consueverant in suis epistolis honorare, sed cum malitiosa interminatione . . . . . Epistolam Nicolai Papæ plenam terribilibus et a modestia sedis Apostolicæ antea inauditis maledictionibus." — (Annal. Bertin., ann. 865.)

delinquent archbishops. Teutberga herself, worn out by the struggle and the persecutions which had lasted for seven years, petitioned the Pontiff for peace, and asked to be separated from Lothair, that she might end her days in quiet; but the victory was not yet gained, and the Pope scornfully refused her request. An endeavor of Lothair to settle the matter by appeal to the wager of battle was rejected with indignation; and for the third time he ordered the timeserving prelates of Lotharingia to put into effect the sentence of excommunication pronounced against the aspiring concubine. Commands were addressed to Louis-le-Germanique to join in the pressure on Lothair, and to desist from his intercession on behalf of the deposed archbishops, while the prelates of Germany received a sharp reproof for joining in the appeal. The opposition was at length broken down, and Waldrada was forced to Rome; but before his triumph was complete, Nicholas died, leaving to his successor, Adrian II., the legacy of this quarrel and the incipient schism of the Greek Church, which he had rashly provoked. Lothair, hoping to find the new Pope more respectful to the regal dignity, intimated a desire to visit Rome in person, to justify his course, and to be reconciled to the Church. Less imperious than his predecessor, Adrian welcomed the apparently repentant sinner; the excommunication of Waldrada was removed on condition of absolute separation from her paramour; and that Lothair's journey might be impeded by no pretext, epistles were addressed to Charles and Louis, commanding them not to trouble Lotharingia during the pious absence of its king. An honorable reception awaited Lothair. He was admitted to the communion on the oath, which no one believed, that he had obeyed the commands of Nicholas as if they had been those of Heaven, and had abstained from all intercourse with Waldrada. The victory of the Pope was as complete as the abasement of the king; the sacrament was administered as an ordeal, in which the courtiers of Lothair were associated as accomplices in his guilt, and both parties separated, equally satisfied with the result. A still further triumph was, however, reserved for the Church, by one of those mysterious occurrences which almost justify the belief, then universally prevalent, of special interpositions of Provi-

dence. Lothair was scarce fairly started on his return home, when his progress was arrested at Piacenza by an epidemic which broke out among his followers, and there, after a short illness, died the miserable young king and his partners in guilt. The effect was, of course, prodigious; Divine justice had completely vindicated the acts of Nicholas and Adrian; and God himself had condescended to execute the sentence of the Church on the hardened adulterer who had sought to shield himself by sacrilegious perjury from the punishment due to his offences.*

Heaven had thus sanctioned the immense extension of prerogative, secular and ecclesiastic, which the Popes had assumed throughout the affair. The principle was asserted and maintained that an appeal to sacerdotal jurisdiction barred all subsequent reclamation to the ordinary tribunals,† — a doctrine capable of immense expansion and illimitable results. By deposing and degrading Gunthair and Thietgaud, without a preliminary trial at home, without an accuser, and without the ordinary judicial formalities, Nicholas erected himself into a judge of first and last resort, without responsibility and without appeal, — the sole arbiter of destiny for the highest dignitaries of the hierarchy. By annulling the acts of the Lotharingian Synods, and forcing their members not only to submit to this, but humbly to apologize for the iniquity of their decrees, he established a complete ascendency over the provincial prelacy, and vindicated the supremacy of the Holy See as the only irrefragable authority in the Church. Nor was the victory over the secular power less complete. When Lothair appeared before the Papal legates to answer the appeal of Teutberga, he acknowledged the jurisdiction of the Popes over monarchs; and however he might dissemble, he never afterward dared to deny it, each step only serving to confirm that jurisdiction in its most absolute sense. And when Adrian threatened the

* The Annal. Bertin., Regino, the Epistles of Nicholas I., and the works of Hincmar, furnish abundant materials for the details of this affair, of which we have lightly touched the salient points.

† "Quia ecclesiæ refugium quærens, et ecclesiasticum judicium semper expetens, sæculari non debet submitti judicio." — Nicolai Epist. 148. We see here the practical application of the interpolation of the Theodosian Code, Lib. XVI. Tit. 12.

kings of France and Germany, and ordered them not to interfere with Lotharingia during the absence of their nephew, he placed himself at the head of Christendom, as the self-constituted sovereign of sovereigns. The moral effect was not less decisive. An unarmed priest, unable to protect his palace or his person from the brute force of his enemy, Nicholas walked without swerving along the path he had marked out, over the prostrate necks of kings and prelates, clothed only in the mysterious attributes of his station, and invoking the Most High in the name of truth and justice. What wonder that the populations should revere him as the Vicegerent of Heaven, as the incarnate representative of God, and that the most extravagant pretensions which Isidor or Ingilram had promulgated were regarded as his legitimate and imprescriptible prerogatives?

It must not be supposed, however, that this vast supremacy descended in an unbroken line from Nicholas to Innocent III. The tenth century was yet to see the darkest period in Papal annals, infamously illustrated by Marozia and John XII., when the Holy Father was the puppet of any savage noble who could obtain command in Rome. Whatever wrongs Italy may have suffered from the Tedeschi, the world at least owes to them that Teutonic influence rescued the Papacy from this degradation, and placed it in hands competent to discharge the weighty trust. Blindly working out the decrees of Providence, the Saxon and Franconian Emperors little thought that they were elevating a power destined to undermine their own, or that the doctrines of Isidor in the mouth of a priest could break the power of an iron Kaiser, the warrior of sixty battles.

If fraud and forgery, abject superstition and arrogant assumption, were by turns employed to effect the revolution which we have thus briefly sketched, their justification is to be found in the lawlessness of the age, which drove the clergy to employ the only weapons of the weak against the strong. Concerning the oppression of the Church, much curious material exists which, had space permitted, we should have liked to examine. We would also have desired to follow the Papal power in its fluctuating career of victory, and to trace the effects of the principles which Nicholas so boldly established. The suc-

cessive contests of the Popes with the bishops to eradicate the corroding cancer of simony; with the priesthood to enforce the neglected rule of celibacy; with the secular power to free the Church from all dependence on the laity; with the people to repress the heresies which were constantly arising, — all these are questions which spring naturally from the theory of the False Decretals, presenting food for abundant thought and opportunity for picturesque narration in their rapid vicissitudes and wide-spreading catastrophes. The monastic orders, also, the efficient weapon of the Papacy in its contests with the hierarchy, both secular and ecclesiastic, afford a tempting field for the student alike of history and of human nature. These themes, however, would require not one, but many volumes, and for them we must refer our readers to the "History of Latin Christianity."

A word of apology, in conclusion, is due to Dean Milman; for we feel that a work which so successfully supplies a want in English literature should have received an analytical examination, and a generous exposition of its merits. If we have used his volumes rather as an epigraph than as a subject of discourse, it has arisen from no lack of appreciation of labors whose result must hold a permanent place in the estimation of scholars. In more than one department of literature he has been distinguished by no mean success; but it is to the present work, we are confident, that he will look back as to the crowning achievement of a long and honorable career.

ART. VII. — *British Novelists and their Styles; being a Critical Sketch of the History of British Prose Fiction.* By DAVID MASSON, M. A., Professor of English Literature, University College, London, Author of "The Life and Times of John Milton," &c. Boston: Gould and Lincoln. 1859. 12mo. pp. 312.

No age has been, doubtless no age will be, without its Gradgrinds, many or few, — men who look upon facts alone as